

United States
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Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES.)

CLINTON J. HUTCHINS,

Appellant,

vs.

AMERICAN STEAMSHIP "GREAT NORTH-
ERN," Her Engines, Boilers, Tackle, Ap-
parel, Boats, Furniture and Appurtenances,
and A. AHMAN, Master, Bailee and Claim-
ant Thereof, and THE GREAT NORTHERN
PACIFIC STEAMSHIP COMPANY, a
Corporation, Owners Thereof,

Appellees.

VOLUME II.
(Pages 385 to 711, Inclusive.)

Upon Appeal from the United States District Court for
the District and Territory of Hawaii.

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(Testimony of Dr. Robert J. McAdory.)

Q. How long would it have taken to have immobilized Mr. Hutchins' arm?

A. About a half an hour.

Q. About a half an hour, but I suppose you were hungry and wanted to get your breakfast, Doctor, that's natural. A. Probably.

Q. Yes, and how long did you remain in Mr. Hutchins' room after you came back?

A. That I cannot answer definitely.

Q. No, you say probably you were hungry, were you? Can't you remember?

A. I can't remember my breakfast back so far. Naturally I eat breakfast every morning.

Q. How long did you remain after you came back from that call, from that woman you say was in a dying condition,—you only went away and was gone about five minutes. When you came back can't you give us some idea how long you stayed with Mr. Hutchins?

A. It must have been in the neighborhood of five minutes, maybe a little bit longer.

Q. Yes, what time was it that you administered to Mr. Hutchins [378] this grain of cocaine?

A. Shortly after getting him in bed.

Q. Shortly after getting him in bed, and he wasn't in bed more than ten minutes until you was back there? A. About that time.

Q. Yes, and by having administered this grain of cocaine wasn't it advisable— A. Codeine.

Q. Codeine, all right; I thought you said cocaine.

A. Codeine.

(Testimony of Dr. Robert J. McAdory.)

Q. All right; having administered this codeine,—that is a sort of an anesthetic, ain't it?

A. It is an analgesic; it doesn't numb the senses but eases the pain.

Q. Yes, it deadens the pain? A. Yes.

Q. Just like an anesthetic, ether or any other—

A. No, sir.

Q. No, but it's administered for that purpose; it may not be as strong, but it is administered for the purpose of deadening pain, isn't it?

A. That's true.

Q. And now, having administered that, wouldn't it have been advisable for you to have made a closer examination and manipulated that arm some to ascertain whether there was a fracture there or not?

A. The amount of codeine that I gave him would not in any way have relieved the pain that would be incident to manipulating the joint that was injured, like Mr. Hutchins'.

Q. Was there any other doctors on board the "Great Northern" at that particular time, on that day, that voyage? [379] A. I don't know.

Q. You didn't make any inquiry to find out, eh?

A. No.

Q. How many times have you administered an anesthetic on the "Great Northern" in the year you were employed there? A. Never.

Q. Never administered an anesthetic?

A. I have had it administered.

Q. You had an assistant, then?

A. Somebody helped me; I didn't help them.

(Testimony of Dr. Robert J. McAdory.)

Q. Who assisted you in administering the anesthetic when you did?

A. I haven't any recollection.

Q. Wasn't it one of the stewardesses?

A. I never had a layman administer an anesthetic on a ship.

Q. I know, but you always superintend the administration of that anesthetic, don't you?

A. When I do the administering. I took no part in the case. It was another surgeon who did it; I wasn't bothering my head about that.

Q. I see. It was not necessary at all to administer an anesthetic to manipulate that arm and ascertain whether or not there was a fracture there?

A. It would be done without an anesthetic.

Q. Sure, it could be done without an anesthetic, and from the examination that you made there,—how long was you examining Mr. Hutchins' arm after you got him in bed?

A. I didn't examine him at all when we put him in bed.

Q. Examined him before you put him in bed?

A. Only so far as looking at his condition in order to get [380] him under favorable surroundings, in his room first.

Q. And when you got him under favorable surroundings how long did you take in examining him?

A. I made the remark a little while ago that I was in his room in the neighborhood of five minutes. Between five and ten minutes I came back and found him being dressed by his wife.

(Testimony of Dr. Robert J. McAdory.)

Q. Then you didn't examine him any further than just to look at it?

A. Oh, no. I took the arm in my hand and went over certain—

Mr. DAVIS.—That is not in answer to the question.

The COURT.—Continue your answer.

A. I took Mr. Hutchins' arm in my hand and went through the symptoms already cited in order to find a grating of broken ends. I did not want at the time to put him to any more suffering than was absolutely necessary to satisfy my mind that by leaving him as I did the rest of the voyage that he would suffer no injury in consequence, for I had detected at the time that—

Mr. DAVIS.—That is not an answer—

The COURT.—He is answering the question, Mr. Davis. Don't interrupt, please.

Mr. DAVIS.—I didn't ask him that; he is going on to describe it. Haven't I got a right to have an answer to my question. I asked him how long he was doing that; that's all.

The COURT.—I think you are mistaken.

Mr. DAVIS.—No. Please read the question, Mr. Reporter; I know what I asked.

The COURT.—Now, Mr. Davis, this witness is entitled to answer the question. Read the question. [381]

(Last question read. Last answer read.)

Mr. WARREN.—I submit it is responsive all the way through.

(Testimony of Dr. Robert J. McAdory.)

The COURT.—The answer is legitimate and proper, and he is entitled to answer.

Mr. WARREN.—I want the witness to continue his answer.

The COURT.—He has told you what he did. Read the question again and let him answer it.

(Last question read.)

A. If I had detected at the time that there had been more prominent marked symptoms I would have immobilized—

Mr. DAVIS.—I didn't ask him what he would have done your Honor, it is not fair to put that stuff in on cross-examination.

The COURT.—But you asked the witness, or attempted to get the witness to answer that he didn't do a thing for the man.

Mr. DAVIS.—All right; I'll come back at him again.

The COURT.—He asked you what did you do, Doctor, do not state what you would have done. He objects to that as not being responsive to the question. Have you told all that you did, of what examination you made?

A. I suppose I ought to repeat that.

The COURT.—Never mind that; the question is answered. Go ahead.

Mr. DAVIS.—How long were you doing that?

A. In minutes I cannot answer that question definitely.

Q. Was you five minutes?

A. I think I was.

(Testimony of Dr. Robert J. McAdory.)

Q. Was you more than seven minutes?

A. That I cannot answer; it is absolutely impossible for me to tell you definitely how many minutes—

Q. Tell us as near as you can, were you ten minutes? [382]

A. I made the statement that it was somewhere between five and ten minutes.

Q. Exactly, and it was nearer five minutes than ten minutes, wasn't it?

A. I don't know; I can't tell you that.

Q. At all events, you didn't attempt to immobilize the arm? A. No.

Q. Isn't it true that the only treatment, medical or surgical, that you gave Mr. Hutchins was that manipulation you described, and administered this grain of codeine, isn't that all you done?

A. In addition, I advised carrying the arm in a sling.

Q. Never mind the advice; isn't that all you actually did?

A. I think my advice as to carrying the arm in a sling and subsequently seeing it carried out might be considered all the treatment. We don't stay around a patient and do all of these things; we delegate a nurse or a friend or somebody—

Q. I want to know what you done outside of administering that advice; that's all you did do?

A. By my own hands.

Q. Did you make the sling and put his arm in it or did you ask anybody else to do it for you?

(Testimony of Dr. Robert J. McAdory.)

A. No, I didn't make the sling.

Q. No; nor did you ask anybody else, any of the stewards or stewardesses on board, to make it?

A. No.

Q. Did you report the accident to the captain?

A. I did.

Q. Eh? A. I did. [383]

Q. Did the captain go to see Mr. Hutchins?

A. I don't know.

Q. When did you make the report to Captain Ahman?

A. I don't know definitely the date.

Q. Eh?

A. I don't know the definite time I made the report.

Q. You don't know the definite time? Who was present when you made this report?

A. That I cannot say; the captain was in his room when I had occasion to see him.

Q. Was the report verbal or written?

A. Verbal.

Q. When was it, on the same day?

A. There is a written report of all accidents—

Q. Well, I am asking you, did you make a report of the thing on the day it occurred, to the captain of the vessel, did you make an oral report that day, on the 18th of February, to the master of that steamship about this accident? A. I think I did.

Q. Will you swear you did?

A. I cannot swear definitely to the time I did make that report, no.

(Testimony of Dr. Robert J. McAdory.)

Q. Have you ever been in that shower-bath yourself? A. Never have.

Q. No, you never was in that particular shower-bath yourself? A. No.

Q. But you came in there and saw Mr. Hutchins sitting on a stool, eh, and suffering pain?

A. Yes.

Q. Yes, and of course you was doing as every doctor does, you was trying to do the best you could to get him removed [384] away and your attention fixed on him? A. Yes.

Q. Is that true? A. Yes.

Q. Yes, then will you undertake to swear now that you saw that handle in the back of that bath-tub on that morning, while you were thus engaged?

A. No.

Q. You won't? A. No.

Q. Well, then, when you told Mr. Warren that the handle was there you might be mistaken about it?

A. It was there when I examined the bath.

Q. I know, but I am asking you—how long afterwards? A. I examined it that day.

Q. What time? A. I don't know.

Q. Eh? A. I don't know.

Q. Who was with you? A. Nobody.

Q. What did you examine it for, for what reason?

A. To see if there was any way in there by which he could have supported himself. I have a custom, I might say, of looking into these things that might be for the well being of passengers, we frequently report things of that character.

(Testimony of Dr. Robert J. McAdory.)

Q. How long was you making that examination, Doctor?

A. Just a matter of a glance, that was all that was necessary.

Q. Eh?

A. A glance was all that was necessary.

Q. I am asking you what you did,—did you just glance?

A. I went in and looked at the tub—compartment.

Q. Did you go in and examine it or did you glance at it? I don't care which way you put it, you talk about glancing,—was it a glance or an examination?

[385] A. Well, it was an examination.

Q. Then that glance, when you said glanced, you are mistaken about that, you wish to qualify that, do you, you wish to qualify that?

A. Well, I don't think so; no. Some people by glancing can take in a good deal.

Q. All right, then, it was just a glance. You stand by that statement that it was just a glance, do you? A. I think so; yes.

Q. All right. Now, outside of administering this grain of codeine, did you give Mr. Hutchins any more medicines on that voyage after that accident?

A. No.

Q. No, and you didn't make any sling or cause any sling to be made for his arm? A. No.

Q. No, and you didn't undertake to immobilize his arm? A. No.

Q. Then all you did was simply—you heard a grating sound there, didn't you, when you were manipu-

(Testimony of Dr. Robert J. McAdory.)

lating it,—you said you heard a grating sound?

A. I heard a grating of the sesamoid bones around the front of the glenoid, that I could not definitely state it was that particular bone, but it did not give the same grating sound that a crepitus would, broken, jagged ends.

Q. Now, you are talking about crepituses, all right. Wasn't that enough to cause a scientific practitioner to immediately immobilize the arm as a matter of precaution and safety?

A. Not the fact that you hear the little bones around there [386] clicking, no.

Q. They never do, never immobilize it after hearing them clicking or grating?

A. No, not those bones. If you sling your arm around this way you will get that.

Q. You know he is a heavy man? A. Yes.

Q. Didn't he tell you that he fell out of the bathtub on his left shoulder? A. Yes.

Q. You saw him sitting on that stool gasping and suffering pain, did you? A. Yes.

Q. Now, wasn't that enough to arouse your suspicions that there might be a fracture there, that you ought to immobilize it?

A. It aroused my suspicions to recommend him as soon as he arrived in Honolulu to seek advice on that particular point.

Q. Outside of the advice on that particular point, wasn't it your duty as a surgeon to immediately immobilize that arm as a matter of precaution and safety?

(Testimony of Dr. Robert J. McAdory.)

A. It was my opinion after examining Mr. Hutchins that there would be no danger in his carrying his arm in a sling for the remainder of the voyage.

Q. I didn't ask you that; I asked you if it wasn't your duty as a physician to immobilize that arm; that is what I asked you, answer yes or no.

A. My duty to a patient is the result of my judgment—

Q. Yes, and—

A. —and in my judgment I did what I did in that particular case. [387]

Q. I know you did what you did, but wasn't it, as a scientific practitioner, wasn't it the proper thing to do to immobilize that arm in view of what took place and in view of your examination?

A. Not under the conditions; no.

Q. Then if Doctor Wood testified that it was proper to do that then his testimony is worthless?

A. I don't know anything about his testimony.

Q. And if Doctor Straub did so testify, then his opinion is not worth anything in your judgment; is that so?

Mr. WARREN.—I object to the question that it certainly does not give the witness any comprehension of the conditions which were known to Doctor Wood when he made the examination.

Mr. DAVIS.—Here is a man who was on the ground, and who knew all about it.

The COURT.—He can't give his opinion on anyone else's testimony.

Mr. DAVIS.—Now, I will ask you, then, if Doctor

(Testimony of Dr. Robert J. McAdory.)

Hobdy testified after having received a statement from Mr. Hutchins as to the accident, as to how it happened and after having made an examination if he testified that it would have been skillful and scientific treatment to have immobilized that arm, is Doctor Hobdy wrong in your opinion and judgment?

Mr. WARREN.—I make the same objection on the same ground.

Mr. DAVIS.—I submit the question is proper.

The COURT.—Sustain the objection. You cannot ask this man his opinion on somebody else's testimony.

Mr. DAVIS.—To which I respectfully except, and assign the same as error. [388]

The COURT.—Exception allowed.

Mr. DAVIS.—Now, was the treatment which you gave this patient on board this vessel scientific and skilful treatment in your own opinion?

A. It was.

Q. What you have described, what you done, was that all you think you was required to do to give this man skilful surgical treatment? A. Absolutely.

Q. Absolutely, that is your opinion of it, is it?

A. Absolutely.

Q. Ha-ha! And then you gave him a grain of codeine; that's all you done?

A. That is all the medicine I gave him.

Q. Yes, but you didn't bandage his arm?

Mr. WARREN.—I object to the question as asked and answered.

Mr. DAVIS.—You didn't cause it to be bandaged?

(Testimony of Dr. Robert J. McAdory.)

A. No.

Q. You only saw him once in his stateroom, isn't that true?

A. I saw him a great many times after the injury.

Q. In his stateroom?

A. Passengers do not stay in their staterooms very much; they stay on deck. It is too warm in the staterooms.

Q. Did you go to his stateroom after you visited him that morning?

A. It wasn't necessary; I saw him on deck very frequently.

Q. I didn't ask you that; I asked you if you went to his room. A. No.

Q. Do you know whether the master of the vessel went? A. No. [389]

Q. You was present at this mock trial?

A. Yes.

Q. Mr. Hutchins' back was turned to you, wasn't it? A. No.

Q. He was facing you, was he? A. Yes.

Q. You are sure of that? A. Absolutely.

Q. I suppose you went in that shower-bath compartment and took hold of that handle that was on the back of the bath, did you, Doctor?

A. I did not.

Q. And you didn't pay any particular attention to the handle; you just went in and glanced at it, as you state, isn't that all? A. Yes.

Q. Where did you graduate, what college of physi-

(Testimony of Dr. Robert J. McAdory.)

cians and surgeons did you graduate from, Doctor McAdory?

A. The University of the City of New York.

Q. Yes; that's a good college, too. I suppose this other patient that was sick on board,—did she die or not? A. No.

Q. Did you advise Mr. Hutchins to go to any—to some physician in Hilo to examine into that fracture?

A. When I suggested on getting into Honolulu to see somebody he said he would see his friend, Doctor Wood—

Q. I didn't ask you that; I asked you if you suggested going to anybody in Hilo? A. No.

Q. How long were you in Hilo, Doctor, the ship, on that voyage?

A. We arrived there in the morning and left at midnight.

Q. Where were you from morning to midnight, did you stay on [390] the vessel? A. No.

Q. Where did you go—to the Volcano House?

A. That I do not recollect.

Q. Eh? A. I don't recollect.

Q. Well, didn't you go to the Volcano House?

A. I don't know; I made several trips up there. We made seven trips and I was up to the volcano five times; whether this was one of them or not I don't remember.

Q. On this particular trip in February, as a matter of fact, didn't you go to the volcano?

A. I told you I don't remember.

(Testimony of Dr. Robert J. McAdory.)

Q. Then your memory must be very very poor if you don't remember having seen that volcano in February, eh?

A. I may have seen it in February, probably I went up there; we made seven trips down there, seven trips here.

Q. I don't care if you made five hundred trips.

A. I don't remember whether it was one of those trips which he was here or not.

Q. He was injured on the 18th of February, 1916; it was the February trip; do you remember whether you went to the Volcano House on the arrival of the vessel at Hilo?

A. I replied that I do not remember.

Q. But you might have gone up, eh?

A. Very likely.

Q. More than likely you did go up?

A. Two times I didn't go up, but which of these two it was I don't remember.

Q. When the vessel arrived in Hilo on that particular trip, the vessel arrived on the 20th, the accident happened on the 18th, that was two days, did you inquire after the [391] vessel arrived from Mr. Hutchins, in what condition his arm was?

A. I made the statement that I spoke to Mr. Hutchins every day while he was on the boat; we passed each other frequently.

Q. Did you ask him about his condition, whether he was suffering any pain when the vessel arrived at the port of Hilo on the 20th of February, 1916?

A. That I do not recall.

(Testimony of Dr. Robert J. McAdory.)

Q. No, and did you tell him or make any proposition to go to any physician in Hilo with him?

A. I did not, because of his having mentioned his friend, Doctor Wood.

Q. I don't care what the reason was, you didn't do it, that's what I am asking you, you didn't do that, you didn't suggest to him to go to a physician?

A. No.

Q. No? A. Not in Hilo.

Q. And you was—you arrived there about eight o'clock in the morning in Hilo?

A. About that time.

Q. Eh? A. About that time.

Q. And you didn't leave until midnight; when did the vessel arrive in Honolulu, do you know?

A. About ten in the morning.

Q. On the 21st, wasn't it?

A. I don't remember the dates.

Q. You don't remember? A. No.

Q. Wasn't it three days after the accident happened instead of two days that the vessel arrived in Honolulu? [392]

Mr. WARREN.—I object to that, your Honor; the testimony has been two days to Hilo, not two days to Honolulu.

Mr. DAVIS.—I am talking about three days.

Mr. WARREN.—I object to the question and ask for a ruling as stated.

A. I can't answer you—pardon me.

Mr. DAVIS.—The accident happened on the 18th, and the vessel arrived at Hilo on the 20th and ar-

(Testimony of Dr. Robert J. McAdory.)

rived at Honolulu on the 21st, and I have the right to ask him about it. That's three days instead of two days before he got to Honolulu that he had to keep up this suffering, it makes considerable difference.

The COURT.—Did the witness say it was only two days?

Mr. WARREN.—I will withdraw the objection and let the witness answer the question, he can take care of himself.

Mr. DAVIS.—Well, it was three days his arm was in that condition, wasn't it, and as far as you are concerned outside of the administration of that grain of codine you done nothing from the time of the accident until the vessel arrived in Honolulu, did nothing further in the way of treating Mr. Hutchins except to advise him?

Mr. WARREN.—I object to the question; it has been asked and answered several times.

Mr. DAVIS.—I don't think so.

The COURT.—Sustain the objection; he has told at least a half a dozen times what he did.

Mr. DAVIS.—I respectfully except.

Q. After the vessel arrived in Honolulu you didn't treat Mr. Hutchins in any way?

A. No. [393]

Q. You would have no trouble administering an anesthetic or getting the assistance of any doctor on board if you wanted it in a case of necessity, would you, Doctor McAdory? A. No.

Q. How many surgical operations have you per-

(Testimony of Dr. Robert J. McAdory.)

formed, Doctor, within the last five years?

A. I could no more answer that question than fly. I would have to look up a lot of records to answer that question.

Q. Well, have you performed a good many?

A. Yes.

Q. Where?

A. At places where I have been located.

Q. I mean where,—for instance, have you performed any on the “Great Northern”?

A. I never performed an operation on the “Great Northern.”

Q. Did you ever immobilize a broken arm on board of her?

A. Never had any broken arms to immobilize.

Q. I am asking you if you had, or did not.

A. I wish to retract the statement there in regard to the operations there. I was thinking when you asked the question relative to knife operations, but I will have to state that there were a number of accidents of a minor surgical nature on the ship, such as a dislocated shoulder, a fractured rib—

Q. Have you ever immobilized anybody on the “Great Northern”?

A. I immobilized a dislocated shoulder.

Q. Yes, you did do that, eh? A. Yes.

Q. Why didn't you do that to Mr. Hutchins?

A. I thought I told you that.

Q. If it was a bruise wouldn't it be safe to do it—

[394]

A. Mr. Hutchins was able to carry his arm in a

(Testimony of Dr. Robert J. McAdory.)

sling without any great amount of motion. He arrived at the same result without strapping it up in the usual way that fractures are treated, up close to his body; in fact, the results would be better if it was a bruise to sling the arm to let the circulation be free rather than strap it around with adhesive straps.

Q. If it was only a bruise wouldn't it be all right to do that?

A. It wouldn't be the best line of treatment, absolutely not.

Q. Would it subject the patient to any injury?

A. No injury; no.

Q. Therefore you could have done it with perfect safety?

A. Could have done it with perfect safety, yes, with the exception of the possibility of excoriations of the skin which would have caused some physical discomfort.

Q. No suspicion in your mind at the time you made that examination that there was a fracture of that shoulder or arm?

A. There was a suspicion in my mind, yes.

Q. Why didn't you immobilize it then?

A. The symptoms that I could elicit were not sufficient to clear the matter up in my mind.

Q. Still you had a suspicion and wanted to be absolutely sure on that point?

A. I wanted to be absolutely sure in order to give Mr. Hutchins everything possible.

Q. But you had a strong suspicion that his arm was broken?

(Testimony of Dr. Robert J. McAdory.)

A. No, if I had had a strong suspicion that that arm was broken I would have immediately immobilized it.

Q. How far did your suspicion go? You said you had some [395] suspicion.

A. A man of Mr. Hutchins' size where his shoulder is large, it is very difficult to make a definite diagnosis—

Q. I didn't ask you that. I asked you to what extent your suspicions went, was it slight or great?

A. It was slight.

Q. A slight suspicion, not enough to cause you to even bind the arm up, eh?

A. If I had a great suspicion I would have immobilized it.

Q. I see, but you had a suspicion?

A. I had a slight suspicion to this effect that as I stated before I had not given—I did not subject Mr. Hutchins to all the physical discomfort that would have been necessary to become more definitely satisfied as to the real condition of the shoulder, and even if I had I would have subsequently had him undergo an X-ray, because these fractures in persons of his size, and even thinner persons are very difficult to make. That is, as I stated before, the opinion of great surgeons, such for example as Professor Stimson.

Q. Never mind about the professor. Immobilizing the arm, eh, that is, a suspicion enters the mind of a physician that it is broken, it is a small operation, isn't it, a small performance?

(Testimony of Dr. Robert J. McAdory.)

A. Not a simple performance.

Q. But to immobilize an arm is a very simple thing to do? A. A very difficult thing to do.

Q. Very difficult to put cotton around it?

A. That is not immobilizing it. The bones must be set the way they are, and then immobilize that joint so that they [396] will set that way. It is a very difficult proposition, especially in the humerus, which has such a wide latitude of motion; it is one of the most difficult parts of the body to immobilize.

Q. It would take you a half an hour to do it, you say? A. About a half an hour; yes.

Q. You could have bound up the arm; that would have been simple enough. A. Yes.

Q. You didn't even do that, Doctor? A. No.

Mr. DAVIS.—That's all.

Mr. WARREN.—Nothing further.

The COURT.—We will continue this case until Thursday morning at 10 o'clock.

The court then adjourned to meet at 10 A. M., Thursday, March 1, 1917. [397]

*In the United States District Court, in and for the
Territory of Hawaii.*

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
etc.

Libellees.

Honolulu, H. T., Thursday, March 1, 1917.

Testimony of John Waterhouse, for Libellees.

Direct examination of JOHN WATERHOUSE, for libellees, sworn.

Mr. WARREN.—You are the treasurer of Alexander & Baldwin, Limited, Mr. Waterhouse?

A. I am.

Q. I will ask you whether or not between the 21st of February and the 5th of April, 1916, there were any negotiations between Mr. C. J. Hutchins and Alexander & Baldwin, Limited, relative to the purchase of molasses, and if so, when in that period.

A. No actual negotiations. I mean it takes two to make a bargain. I will state this, that Mr. Hutchins came into the office a number of times and was very anxious to [398] see Mr. J. P. Cooke, who is the manager of Alexander & Baldwin, about purchasing molasses of our firm, especially the molasses of our plantations for which we act as agents. especially the McBryde Sugar Company and the Hawaiian Sugar Company,—

Mr. DAVIS.—Wait, I object, we submit this is incompetent, irrelevant and immaterial for any purpose, not tending to prove or disprove any of the issues in this case, and has nothing at all to do with it. Mr. Hutchins' private business has nothing to do with this case, and I don't know for what purpose this evidence is offered. It is beyond my conception why he drags into this case things which are not connected with the case in any way I can see.

(Testimony of John Waterhouse.)

The COURT.—Mr. Davis, one of the elements of damages is that the libellant was prevented from attending to his business, as I understand it; is that correct?

Mr. WARREN.—That is it, your Honor.

The COURT.—The extent of this testimony is that he was about and attending to business at that time?

Mr. WARREN.—Yes, and further, your Honor, that he was here and engaged in and transacted business.

The COURT.—I don't care about the nature of it.

Mr. WARREN.—I do. I propose to show that he was down here at that time, remaining here at that time voluntarily conducting negotiations with sugar agents here when he could have returned, and that he voluntarily remained here and did business here, and was not damaged as he claims by having been obliged to remain here against his will and being kept away from his business in San Francisco; [399] in other words, he voluntarily remained here, and not kept here by the accident.

Mr. DAVIS.—I submit it is incompetent. Your Honor has ruled that the nature of the business is not to be put in evidence here. The fact that he had business or no business might properly be put in here as an element of the damages, but to go into the nature and extent of that business, he has not any right to do it. I don't know what the matter is with him.

The COURT.—As a matter of fact, I do think it is immaterial to go into his private business, but at the same time the fact that he was attending to busi-

(Testimony of John Waterhouse.)

ness, and in a general way of the details of it, not for the purpose of unnecessarily disclosing his business,—I will permit the testimony.

Mr. WARREN.—One of the purposes it will be recalled, he testified his business was buying and selling molasses so that I want to show he was not only here but in that identical business of his own—

The COURT.—And trying to make a deal with regard to molasses, of course in a general way that is all right. I will not allow his private business to be inquired into.

A. What is the question?

Mr. WARREN.—I will put another to save time. Can you recall and state to the Court approximately the dates or time when Mr. Hutchins came to the office of Alexander & Baldwin, Limited, on this business?

A. Some time during the month of March, 1916, several times during the month of March, 1916. The last time I saw him about the office I met him on Merchant street and he said [400] he had been several times to see Mr. J. P. Cooke, the manager of Alexander & Baldwin but was unable to see Mr. Cooke, and I suggested that the best way for him to do was to put the matter in a letter to Mr. Cooke and that Mr. Cooke could look over it at his leisure. He did so.

Q. Have you that letter, Mr. Waterhouse?

A. I have, also Mr. Cooke's reply.

Q. Produce it. Do you recall how soon after that conversation it was that the letter was written?

(Testimony of John Waterhouse.)

A. It was either a day or two days, I think.

Q. After? A. After.

The COURT.—Show the letters to counsel.

Mr. DAVIS.—I submit, your Honor, this is going into private business and details by the introduction of these letters. It is incompetent, irrelevant and immaterial. For the purpose of showing that he had general business, all right, but this letter is going into all of the details of the business. I would like your Honor to have a look at it.

Mr. WARREN.—If your Honor please, for the purpose of fixing the time to which the witness has referred and the nature of the business, but not the details, I desire to offer this letter. If counsel will stipulate, the letter is dated,—stipulate as to the date of the letter and his soliciting the purchase of molasses I am willing to withdraw the letter.

Mr. DAVIS.—That is all right.

The COURT.—I think it is legitimate for this purpose.

Mr. WARREN.—That is all I care to show about that.

Q. Now, Mr. Waterhouse, this letter was written one or two days after you made that suggestion to Mr. Hutchins? [401] A. Yes.

Q. About how many times did Mr. Hutchins go into Alexander & Baldwin, Limited, to see you upon this business before he wrote the letter?

A. He was in two or three times as far as my knowledge is concerned.

Q. How many times afterwards?

(Testimony of John Waterhouse.)

A. I don't think he came in afterwards; I saw him on the street about it.

Q. Do you know whether the negotiations continued or terminated?

A. I think they were terminated by that letter, the reply.

Q. By the reply given by Alexander & Baldwin to Mr. Hutchins? A. Yes, by Mr. Cooke.

Mr. WARREN.—It will be admitted that by letter dated the 22d of March negotiations were discontinued? Letter from Alexander and Baldwin to Mr. Hutchins?

Mr. DAVIS.—All right.

The COURT.—It is admissible for that purpose.

Mr. WARREN.—I think it will be admitted they were both witnesses in Honolulu?

Mr. DAVIS.—Yes, and both typewritten, and Mr. Hutchins did not read it.

Mr. WARREN.—Then I will ask if counsel will admit that this is Mr. Hutchins' signature?

Mr. HUTCHINS.—Yes, that is my signature.

Mr. WARREN.—Both letters being dated and written in Honolulu. That's all. [402]

Cross-examination of JOHN WATERHOUSE.

Mr. DAVIS.—You know Mr. Hutchins very well, eh? A. What is that?

Q. You know Mr. Hutchins very well?

A. I do.

Q. Are you connected with the—you are one of the leading men in the sugar industry here, connected with the plantations, Mr. Waterhouse?

(Testimony of John Waterhouse.)

A. Well, I am.

Q. How long have you been engaged in it?

A. Since 1901.

Q. Did you see Mr. Hutchins,—did he have his arm in a sling when he came in?

A. He did, in a black silk handkerchief, sir, as I remember.

Q. Now these two letters are typewritten letters, both Mr. Hutchins' letter and your reply?

A. Yes.

Q. Written evidently by a stenographer and typist?

A. I presume so.

Q. Yours was, anyway? A. Ours was anyway.

Q. The other one seems typewritten?

A. Yes; it's typewritten.

Q. Now, how many times did Mr. Hutchins call on you in March, do you know?

A. I saw him personally, I think, two or three times; I think at least three times.

Q. You saw him two or three times?

A. Yes, at least three times.

Q. Each time he had his arm in a sling? [403]

A. If my memory serves me right, he did.

Mr. DAVIS.—That's all.

Mr. WARREN.—That's all.

The COURT.—Step aside, Mr. Waterhouse.

[404]

Testimony of J. W. Waldron, for Libellees.

Direct examination of J. W. WALDRON, for libellees, sworn.

Mr. WARREN.—Mr. Waldron, you are the treasurer of F. A. Schaefer and Company, Limited?

A. Beg pardon?

Q. You are the treasurer of F. A. Schaefer and Company, Limited? A. Yes.

Q. And also an officer of the Honokaa Sugar Company and the Pacific Sugar Mill?

A. Yes, secretary.

Q. Did you in the period between the 21st of February and the 5th of April, 1916—

Mr. DAVIS.—Can I ask a question without interrupting? When you are through we will call Doctor Wood for more testimony.

Mr. WARREN.—Did you get the question, Mr. Waldron?

A. No.

Q. Whether between those two dates, the 21st of February and the 5th of April, 1916, you had any negotiations with Mr. C. J. Hutchins, relative to the purchase of molasses? A. Yes, I did.

Q. When did those commence.

A. I cannot say when they commenced. Since being subpoenaed I have looked up the matter of the first letter that is on record, and that is the 28th of March.

Q. Of what year? A. 1916.

Q. Received by F. A. Schaefer & Company, Lim-

(Testimony of J. W. Waldron.)

ited, from Mr. Hutchins?

A. Yes, received by F. A. Schaefer and Company from Mr. Hutchins. [405]

Q. The 28th of March; now, prior to that date, did you have any conversation with Mr. Hutchins about that?

A. I believe I did, but it is some time ago now.

Q. To the best of your recollection the negotiations took their first concrete shape when this letter was submitted?

A. That is my recollection, yes.

Q. Those negotiations were subsequently carried on with Mr. Hutchins? A. They were, yes.

Q. And will you state whether they resulted in a contract or terminated?

A. Yes, a contract,—they resulted in a contract being signed on the 12th of July in Honolulu, and later in San Francisco.

Q. Would you mind stating molasses from what plantations?

A. Molasses of the Honokaa Sugar Company and the Pacific Sugar Mill.

Cross-examination of J. W. WALDRON.

Mr. DAVIS.—Are those letters typewritten or in pen and ink?

A. The letter from Mr. Hutchins dated the 28th of March is typewritten.

Q. Did you notice whether Mr. Hutchins had his arm in a sling at that time?

A. Yes, I remember that Mr. Hutchins did have his arm in a sling.

Mr. DAVIS.—I guess that's all.

Mr. WARREN.—Will counsel admit that this is Mr. Hutchins'? [406]

Mr. DAVIS.—Yes. I want to make a motion, so that the record will be straight, I move to strike the evidence of both Mr. John Waterhouse and J. W. Waldron, to strike the testimony entirely out on the grounds that it is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case and not connected in any way with the breach of this marine contract and no justification for the breach of same, and not admissible, and improper testimony.

Mr. WARREN.—I submit this comes in as affecting the question of damages.

The COURT.—I deny the motion.

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Exception allowed.

Mr. WARREN.—It will save time and delay if counsel will admit, will make this admission, that Mr. T. H. Petrie, Secretary of Castle & Cooke, Limited, and the Kohala Sugar Company, if called to the stand and sworn, would testify that negotiations for the purchase of molasses were opened between Mr. Hutchins and Castle & Cooke.

Mr. DAVIS.—What date?

Mr. WARREN.—In the last two or three days of March and the first two or three days of April, 1916, which were subsequently further carried on by correspondence and resulted in the execution of a con-

(Testimony of Dr. C. B. Wood.)

tract for the sale of molasses of the Kohala Sugar Company to Mr. Hutchins.

Mr. DAVIS.—Will that close the case then?

Mr. WARREN.—Yes, that will close the case for a time.

Mr. DAVIS.—All right. [407]

Mr. DAVIS.—We want to call Doctor Wood in rebuttal of Doctor McAdory's testimony.

**Testimony of Dr. C. B. Wood, for Libelant
(Recalled in Rebuttal).**

Direct examination of Dr. C. B. WOOD, for libelant, recalled.

Mr. DAVIS.—Now, Doctor Wood, Doctor McAdory was on the stand—when was it, yesterday—day before yesterday; this is Thursday; that would be on Tuesday—

The COURT.—That is immaterial ask him hypothetically.

Mr. DAVIS.—He was a witness, and you can get the reporter's notes read.

The COURT.—It is immaterial what Doctor McAdory testified; you put your hypothetical question to Doctor Wood, because he couldn't give an opinion on Doctor Wood's testimony but he can give his professional opinion on the hypothetical question propounded.

Mr. DAVIS.—All right. A passenger on the "Great Northern," to wit, Mr. C. J. Hutchins, having his arm broken in the manner described in testimony in this case, and going to a surgeon for medi-

(Testimony of Dr. C. B. Wood.)

cal and surgical relief and treatment in order to ascertain whether or not he had a broken arm, would it be necessary to administer an anesthetic?

Mr. WARREN.—I object to the question. It does not state the facts and circumstances which should be included in the question. This witness has been present in court, he has not heard all the testimony in this case, and he can't assume to give an answer which describes a man's arm as being broken as testified in this case. [408]

The COURT.—Possibly there might be some objection on that line, but I understand that this witness testified he was familiar with the manner of Mr. Hutchins' injury. I understand the offer is to get practically at the question of whether or not a man injured as this witness knows or has learned Mr. Hutchins was injured, whether or not it was necessary in order to determine whether it was necessary—in order to determine whether there was a fracture, to put a man under an anesthetic.

Mr. DAVIS.—That is all I am asking.

The COURT.—Will you let me frame Mr. Davis' question to that effect?

Mr. WARREN.—He can frame it, your Honor.

The COURT.—All right, let him frame it.

Mr. DAVIS.—I will put the question as I put it before. Isn't that perfectly proper?

The COURT.—I overrule Mr. Warren's objection. Answer the question as put.

Mr. WARREN.—I except and assign the same as error, your Honor.

(Testimony of Dr. C. B. Wood.)

A. It is a question, your Honor, that is impossible to answer yes or no. An anesthetic, to anesthetize a patient with a fracture, any fracture, is a help in determining the nature of the fracture and the extent of the fracture. It is a help for this reason, or for these reasons, that a patient who is recently fractured, who has a recent fracture, in attempting to move the fractured limb, to manipulate it, is painful. Because of the pain, the patient, either consciously or unconsciously, intentionally or unintentionally, resists the attempts to move the limb because it hurts, consequently an anesthetized [409] patient is not suffering pain, not being conscious of what is going on, not being able to bring his muscles into resistance against the manipulation is easier to examine, and as I stated in the first place it is an advantage in many instances to anesthetize a patient in examining a fracture or dislocation or other similar injury to a limb. Now, taking this special fracture which I understand, because I have examined it and seen the X-ray plates, I know that the arm, the shoulder-joint, the humerus, the arm going in at the shoulder-joint, was fractured; I know that a portion of it, which I will call the greater tuberosity, was splintered off; I know in addition to that that there was an impaction, a pushing up of the end of the two fragments, a pushing of the end of that into—impacting it into a similar fragment. Just how much additional information could be gained in this particular case by anesthetizing the patient is somewhat doubtful, because there was not any motion

(Testimony of Dr. C. B. Wood.)

there anyway between the fragments, there was not any great deformity, no misplacement of bone, so that a great deal of manipulation in a case of this kind would not throw much light on the subject, and it is perfectly well understood among surgeons knowing that a fracture is an impacted fracture, that it is bad policy to manipulate it very much, that is, if it was already known it was an impacted fracture, then it would be a mistake either under an anesthetic or not under an anesthetic, to manipulate that limb very much because you would run the risk of breaking the manipulation which would make the case more serious than it [410] was without this manipulation, without breaking up the impaction. The impaction is there, and the aim is to alleviate the impact if you know of the impaction. That is the best I can answer the question.

Mr. DAVIS.—How long did it take you to know there was a fracture there when you examined Mr. Hutchins?

A. Well, I didn't make a positive diagnosis of the fracture and of the nature of the fracture. My strong opinion was there was a fracture but I did not make a positive examination that there was a positive fracture and of the nature of that fracture until I saw the X-ray plate.

Q. But you were satisfied in your own mind and you immobilized his arm immediately?

A. I did that, and my opinion was that it was a fracture.

Q. And that was proper treatment?

(Testimony of Dr. C. B. Wood.)

A. Certainly that was proper treatment.

Q. Yes, certainly that was proper treatment, and there was no need of administering an anesthetic to treat the man in that *was*, was there?

A. I believe the question is not the administration of an anesthetic. As far as the treatment of it was concerned there was no advantage in administering it anyway.

Q. If that was the proper thing to do there was no need of administering an anesthetic, was there, to Mr. Hutchins, before you immobilized his arm?

A. I did not consider it necessary to administer an anesthetic in making my examination, or I should have done so.

Q. Exactly; that's fair, Doctor Wood; that's all I want to know. [411]

Mr. DAVIS.—That is the case, if your Honor please, for the libellant, Mr. C. J. Hutchins. Cross-examine.

Cross-examination of Dr. C. B. WOOD.

Mr. WARREN.—You have stated, Doctor, that in a case where the examining physician knows, as you do now, that there was an impacted fracture, then manipulation would not be advisable, and the more the manipulation the worse it might be for the patient?

A. Well, I did not say manipulation was not advisable, but I stated that extensive manipulation is inadvisable, knowing there is a fracture.

Q. And a doctor examining an injury of that character and finding no fracture apparently, and

(Testimony of Dr. C. B. Wood.)

being unable to determine what the real condition was, would be warranted in making some manipulation? A. Certainly.

Q. And now I would ask you as to the time of manipulation. You have spoken of the pain which naturally attends manipulation. Is there any difference in that degree of pain in manipulating a member in the case of a heavy, thick-set man and a thinner person in this connection, that does it require more or less manipulation to arrive at a diagnosis in the case of an injured shoulder where outside conditions did not indicate what it was?

A. A thin man, a man who has not much muscle or fat over his bones, is an easier subject to diagnose a fracture [412] in, or a dislocation or any injury to or around a joint, because to some extent with the information you gain with your fingers in feeling the fracture, not having so much cushion between your fingers and the bone. As far as the manipulation is concerned, the information you gain by manipulation, I mean the movement of the injured limb as far as any information you can obtain by these movements irrespective of what you obtain by the use of your fingers over the joint, as far as any point in the two instances is concerned, I cannot see much difference.

Q. I mean more particularly in the length of time which you would have to keep on with your examination; in other words, you could conclude the examination with a thinner man sooner than with a heavy-set man?

(Testimony of Dr. C. B. Wood.)

A. Naturally you would get more information directly if there was less thick cushion.

Q. Now, Doctor, on the matter of whether or not it was the proper thing to immediately immobilize the arm, I would ask you if the circumstances were these, what would be your opinion, that is, an accident occurs to a passenger, an injury to his shoulder, it being difficult to determine just what the trouble is, whether there is or is not a fracture, crepitus as distinguished from impaction, the doctor being uncertain, the vessel being two days from the port of Hilo, where there are three at least practicing physicians and surgeons, would it in your judgment be incompetence or negligence of the surgeon on board to abstain from prolonged manipulation or to abstain from actually tying the member in a position [413] which in his opinion might be the wrong position, depending upon what the injury really is, if it is anticipated that within forty-eight hours the patient can consult a physician ashore and have a manipulation made and treatment given.

Mr. DAVIS.—I object unless he puts this in: The only thing the doctor did was to administer one grain or codeine, because that is the fact, without which it is not a proper statement of facts.

The COURT.—Overrule the objection. The question speaks for itself.

Mr. DAVIS.—To which ruling I respectfully except, that it is not a proper statement.

The COURT.—Allowed.

A. It is a long-winded question. My opinion is

(Testimony of Dr. C. B. Wood.)

that when a surgeon is called upon to diagnose and to treat an injury aboard a ship, however far that ship may be from port, whether there are skilled surgeons in the port they are approaching or whether there are no surgeons in that port, it is his duty, in my opinion, to do the best he knows how for the patient irrespective of the chance to consult anybody else. I cannot have any other opinion than that the surgeon should have ascertained not perhaps exactly what the injury was, but that there was an injury, and a painful and somewhat serious injury to the patient's shoulder-joint, and the treatment, the recognized treatment, in cases of that kind as to immobilizing the joint and prevent the pain from motion, voluntary or involuntary on the patient's part, and [414] whether or not it can be determined the exact nature of that injury to the joint which should have been evident there was injured, and having an injury to the joint, that is the treatment that should have been carried out, anyway.

Mr. WARREN.—You have stated that it was a long-winded question; you mean by that a mooted question?

A. No, I mean it brought in several points, among others the fact that it was aboard ship and the length of time they were from port, and the fact that there were surgeons or doctors more or less skilled in that port, all those things concerning what should have been the duty of the one who had been called in to treat that case; that is the reason why I say it is

(Testimony of Dr. C. B. Wood.)

long-winded, not on account of the number of words in it.

Mr. WARREN.—No further questions.

Mr. DAVIS.—That's all; thank you, Doctor Wood. Call Mr. Hutchins to rebut the testimony of Doctor McAdory, that he advised him to have his arm in a sling and have an X-ray taken. [415]

**Testimony of Clinton James Hutchins, in His Own
Behalf (Recalled in Rebuttal).**

Direct examination of CLINTON JAMES HUTCHINS, for libellant, in rebuttal, recalled.

Mr. DAVIS.—You were present in court and heard McAdory, M. D., give testimony?

A. I did.

Q. Was anything said to you by McAdory about putting the arm in a sling, if so, what was it?

A. He said nothing of the kind. It was,—he said it was a bad sprain and would be all right in a few days. I didn't put any sling on; I had a vest; I unbuttoned my vest and placed my arm in this position, holding it up all the time until we got to Honolulu.

Q. Did he ever say anything to you about having the arm in a sling? A. He did not.

Q. Did he say anything about having an X-ray picture taken?

A. He did not; another doctor on board advised me.

Q. Another doctor? Who was he?

(Testimony of Clinton James Hutchins.)

A. A passenger.

Q. Do you know his name?

A. I have forgotten his name; he is from Massachusetts.

Q. McAdory didn't do anything except give you this one grain of codeine? A. He did not.

Mr. DAVIS.—Cross-examine.

Mr. WARREN.—No questions.

Mr. DAVIS.—That is all; that is the case, if your Honor please.

The COURT.—Adjourn court until to-morrow morning. [416]

*In the United States District Court, in and for the
Territory of Hawaii.*

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
etc.,

Libellees.

Honolulu, H. T., Tuesday, March 20, 1917.

Mr. WARREN.—I have here a deposition which I will read.

The COURT.—Can't you do that as you did with several of the others and let me read them? Several have been read. Let the record show that these have been read in evidence.

Mr. DAVIS.—Yes, it will save a lot of time.

The COURT.—All right, I will receive them in

evidence. I will read the depositions before I decide the case. That is the deposition of whom?

Mr. WARREN.—This is from Seattle, from Mr. Wiley—C. W. Wiley.

The COURT.—All right, the depositions of C. W. Wiley are read in evidence. Is there any other evidence, gentlemen, on behalf of either libellant or libellee?

Mr. WARREN.—That closes the case for the libellee.

Mr. DAVIS.—Our case is all closed, your Honor.

The COURT.—Very well, proceed with the argument. [417]

Mr. WARREN.—I would like to inquire whether your Honor will still hold under consideration a ruling on the motion that was made at the close of the libellant's case to strike all the evidence regarding negligence of the doctor. Will your Honor rule on that now?

The COURT.—I will not strike out the evidence, and overrule the motion to strike out.

Mr. WARREN.—We except to that, your Honor, and assign the same as error.

Mr. Davis then proceeded with his argument.

Mr. Warren replied.

Mr. Davis closed the argument.

The COURT.—I will render a decision in the case in a few days. [418]

*In the United States District Court, in and for the
Territory of Hawaii.*

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
etc.,

Libellees.

Honolulu, H. T., April 3, 1917.

The Court filed a decision in this case in favor of the libellees.

Mr. C. S. DAVIS.—If your Honor please, I represent Mr. George Davis, the proctor in this case, and would like at this time to note an exception to the decision, finding and judgment of the Court as contrary to the law and the evidence and the weight of the evidence, and assign the same as error, and give notice of an appeal to the Circuit Court of Appeals, Ninth Judicial Circuit.

The COURT.—Exceptions noted and allowed.

Mr. C. S. DAVIS.—We note an exception to each and every finding of fact and law in the decision, and assign the same as error.

The COURT.—All right; you can make them as specific as you like in the record. [419]

Honolulu, H. T., September 5, 1917.

I, H. F. Nietert, hereby certify that the foregoing transcript of testimony, consisting of Three Hundred and Sixty-four (364) typewritten pages, is a

full, true and accurate transcript of my shorthand notes of the testimony taken and the proceedings had upon the trial of the case of Clinton James Hutchins vs. The American steamship "Great Northern," etc., upon the days and at the times in said transcript mentioned.

H. F. NIETERT,

Official Reporter United States District Court.

[420]

**Order Continuing Cause for Argument Until
Return of Deposition of C. W. Wiley.**

From the Minutes of the United States District
Court, Vol. 10, page 378, Tuesday, March 6, 1917.

(Title of Court and Cause.)

On this day came Mr. George A. Davis, one of the proctors for the libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Whitney, proctors for the libellee herein, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued for argument until after the return of the deposition of C. W. Wiley. [421]

**Proceedings at Argument, and Order Taking Cause
Under Advisement.**

From the Minutes of the United States District
Court, Vol. 10, page 391, Tuesday, March 20, 1917.

(Title of Court and Cause.)

On this day came Mr. George A. Davis, proctor for the libellant herein, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Whitney, proctors for the libellee and claimant, and this cause was called for argument. Thereupon with consent of respective proctors the deposition of C. W. Wiley heretofore returned and filed were considered as read in evidence. Thereafter argument was had by proctors and the case was taken under advisement by the Court and ordered continued until called for decision. [422]

Filed Sept. 13, 1916, at 8 o'clock and 40 minutes
A. M. (Sgd.) Geo. R. Clark, Clerk. By _____,
Deputy Clerk.

*In the District Court of the United States in and for
the Territory and District of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTH-
ERN," Her Tackle, Apparel, Furniture,
Boats and Appurtenances and Against All
Persons Having or Claiming to Have Any
Interest Therein and Against All Persons
Lawfully Intervening in Their Interest
Therein,

Libellee,

and

A. AHMAN,

Master and Claimant.

Proceedings Had July 31, 1916.

BE IT REMEMBERED, that on Monday, July 31st, 1916, at 10 A. M., to which date an adjournment was regularly taken from July 5th, 1916, and on Monday, August 7, 1916, at 2 P. M., to which date an adjournment was regularly taken from July 31st, 1916, at my office in the Merchants Exchange Building, 465 California Street, in the City and County of San Francisco, State of California, in pursuance of the Commission to take testimony hereunto annexed, personally appeared before me Ira A.

Campbell, designated as Commissioner in the aforesaid Commission, Walter A. Scott, A. Ahman, A. K. Relf, John B. Morris, S. W. Jamieson, Charles Wall, George Grundy, W. B. Lowenthal, C. S. Mills, W. J. Tomlin, J. B. Switzer, Katie [423] Schnieder, Sam B. Stoy and Samuel Symon, witnesses called on behalf of the claimant.

John W. Cathcart, Esq., of the firm of Thompson, Milverton & Cathcart and Grant H. Smith, Esq., appeared as proctors for the libellant on July 31, 1916 (Grant H. Smith, Esq., appearing as proctor for the libellant on August 7, 1916), and Charles H. Carey, Esq., of the firm of Carey & Kerr, appeared as proctor for the claimant, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth:

Testimony of Walter A. Scott, for Claimant.

WALTER A. SCOTT, called on behalf of the claimant, sworn.

Mr. CAREY.—Q. What is your full name?

A. Walter A. Scott.

Q. Where do you reside?

A. 1234 Tenth Avenue, San Francisco.

Q. What is your business? A. Photographer.

Q. How long have you been in the business of photographer?

A. About seven years in that business exclusively.

Q. State whether or not you were employed by

(Testimony of Walter A. Scott.)

the Great Northern Pacific Steamship Company, or the claimant in this case, Captain Ahman, to make photographs of a certain shower-bath on board the steamship "Great Northern."

A. I was employed by Mr. Relf of the Great Northern Pacific Steamship Company on May 1, 1916, to make photographs of a shower on the steamship "Great Northern."

Q. Do you know whether Mr. Relf was Claims Agent for that company?

A. He so informed me, and I have since learned that he is. [424]

Q. How many photographs did you make of the shower?

A. Three subjects on which I exposed six plates.

Q. Have you the plates here? A. I have.

Q. Produce them and have them marked for identification. A. Yes.

Q. I show you three photographic prints and will ask you whether these are photographs taken from the plates that you have just produced and identified. A. Yes, they are.

Q. Please mark those for identification.

A. Yes. (The prints are marked "Claimant's Exhibits 1, 2 and 3 for identification.")

Q. Please state how these photographs were taken of the shower and when did you take them.

A. On May 1, 1916.

Q. Mr. Scott, in testifying in answer to any of these questions you can refer to the number of the exhibit on each of them so as to identify them?

(Testimony of Walter A. Scott.)

A. In taking numbers 2 and 3, the camera was placed on the tripod in the shower opposite to the one photographed, right back against the wall, and I suspended a 250 watt Mazda light over the camera to furnish the illumination; I used no flash. In making No. 1, the same illumination was used from the same source, and the camera was placed on a stool outside the opening leading into the showers.

Q. Now, will you state whether or not these photographic prints are correct representations of the bath?

A. They are; there has been no retouching or alteration of any kind made either on negatives or on the prints.

Q. These prints then are correct and actual prints directly from these negatives or plates which you have produced here? A. They are. [425]

Mr. CAREY.—I offer the prints in evidence, being “Claimant’s Exhibits 1, 2 and 3.”

Mr. CATHCART.—We have no objection to the use of these in the place of the plates or negatives. Of course we reserve all right to object on any ground other than as to the form of the question.

Mr. CAREY.—Q. Referring to “Claimant’s Exhibit No. 3,” I will call your attention to a white line on the right-hand side of the picture. What does that represent? A. That is a marble slab.

Q. Approximately what thickness is that marble slab, do you recollect?

A. My impression is about an inch and a half.

Q. In the center of the picture is what appears to

(Testimony of Walter A. Scott.)

be a handle, is that a metal handle? A. Yes.

Q. How is that fastened to the wall?

A. That is fastened to the back wall of the shower by four screws.

Q. On the left-hand side of the picture appears to be a number of pipes; were these pipes there when the photograph was taken? A. Yes.

Q. Overhead in the same exhibit is what appears to be a metal rod on which is attached a curtain by rings; was that there at the time the picture was taken? A. Yes.

Q. I call your attention to "Claimant's Exhibit No. 2." I notice what appears to be a door-knob at the left hand of that picture; was there a door-knob there when the picture was taken?

A. Yes, there was a door-knob and a key-hole just below it.

Q. What is that door-knob, metal or other substance?

A. I judge from the photograph that it is metal; I did not observe it carefully at the time. [426]

Q. I call your attention to "Claimant's Exhibit No. 1," wherein there appears to be a basin at the bottom of the shower; was that there at the time?

A. Yes.

Q. Of what material was that made?

A. The same material that the porcelain bath tubs are made of.

Mr. CAREY.—You may take the witness.

Cross-examination.

Mr. SMITH.—Q. Mr. Scott, in taking "Exhibits

(Testimony of Walter A. Scott.)

2 and 3," what change did you make in the position of your camera, if any?

A. No. 3 was made with the tripod at its greatest extension. No. 2 was made with the tripod considerably shortened. The position of the camera was such that it was impossible for me to see from the ground glass what I was getting. I simply had to put the camera right back against the wall and figure out in a general way what I was going to get. No. 2 was made from a lower view point to insure that I should take in all of the basin or bottom of the shower.

Q. What would you say was the elevation of your camera when you took "Exhibit 3," the elevation from the floor?

A. The lens probably was about 5 feet from the floor.

Q. What would you say was the elevation of the lens when you took "Exhibit 2"?

A. It is difficult for me to say exactly, but it was probably a foot or 18 inches lower.

Q. Did you take any other pictures of this bathroom at that time? A. No.

Q. Only three?

A. Only three; three subjects, six exposures.

Q. Where are the other prints from the other exposures?

A. The plates are all here; I do not know that I could tell you which plate of each pair these prints are made from. The [427] plates are very thin because the steamer was about to sail and the time

(Testimony of Walter A. Scott.)

allowed me for making these photographs was so limited that I could not give full exposures. I think you will see the detail better if you hold the plate so that you look toward that wall behind you through it.

Q. Did you make any prints from these other plates?

A. No, I selected in each case the negative that I thought was a little better exposed and made my prints from that.

Q. In taking "Exhibits 2 and 3" at what distance would you say your lens was from the marble plate directly in front upon which a handle is shown?

A. That would be a matter of guesswork on my part. I could establish it exactly by measuring the length of the camera and then the distance to the opposite wall.

Q. But you stated that your camera was against the opposite wall? A. Yes.

Q. In taking "Exhibits 2 and 3"? A. Yes.

Q. So that it was the distance from one wall to the other? A. Yes.

Q. Deducting therefrom the length of your camera itself?

A. It would be largely a matter of guesswork for me to say, but I would judge that it was not more than 8 feet from the rear wall of the shower in which the camera was standing to the rear wall of the shower which I was photographing.

Q. Where was the steamship "Great Northern" when you made these photographs, Mr. Scott?

(Testimony of Walter A. Scott.)

A. It was lying at one of the piers north of the Ferry Building; I cannot tell you the number now.

Q. In San Francisco? A. Yes. [428]

Testimony of A. Ahman, for Claimant.

A. AHMAN, called for the claimant, sworn.

Mr. CAREY.—Q. Your name is A. Ahman?

A. Yes.

Q. Are you captain of the steamship "Great Northern"? A. I am.

Q. How long have you been captain of that ship?

A. Since November, 1914.

Q. Is that the date when she first began to operate as a steamship?

A. No. She commenced to operate on the 27th of January, 1915, leaving Philadelphia.

Q. Then November following you took charge as captain of that ship? A. November previous.

Q. Did you bring the ship to the Pacific Coast?

A. Yes.

Q. From what port?

A. From Philadelphia to San Francisco.

Q. State whether or not you were at San Francisco during or prior to her outfitting and furnishing.

A. Yes.

Q. At what shipyard was she built?

A. William Cramp & Sons.

Q. How many years' experience as a mariner have you had? A. 35 or 40 years.

Q. How long have you been a master?

A. Since I have been on this coast I have been

(Testimony of A. Ahman.)

master about three years. I was master previous to coming to this company, that is, the Great Northern Pacific Steamship Company.

Q. How many years have you had experience in operating passenger ships?

A. 25 years or more.

Q. How general has been your experience in sailing the seas, as to where you have gone?

A. I have been pretty much all over the world; I was running to Panama for about 6 or 8 years, going out to China for 12 or 15 years, and the remainder of my time from Alaska to San Francisco, Honolulu.
[429]

Q. You may state whether or not your experience has given you opportunity to observe the manner in which ships are outfitted and equipped for the passenger service and particularly as to the facilities afforded on first-class passenger boats for baths?

A. In all the ships I have been in, and in all my experience, I never saw a ship that was better outfitted than the "Great Northern" of the Great Northern Pacific Steamship Company for both shower-baths and everything else, none whatever.

Q. Your experience has justified your forming a conclusion about that, has it? A. Yes.

Q. On the "Great Northern" there is a certain shower-bath at which it is claimed the libellant, Mr. Clinton James Hutchins, received injury on or about February 18, 1916? A. Yes.

Q. Were you master of this ship at that time?

A. Yes.

(Testimony of A. Ahman.)

Q. About how long had the ship been in the passenger service at the time of that accident?

A. She had been in the service about a couple of weeks over a year—a year's time you might call it.

Q. Do you know which shower it was that Mr. Hutchins received his injury in?

A. I heard of it, yes, which shower it was.

Q. I wish you would describe that shower as it was at that time and state whether or not it is in the same condition at the present time.

A. The flooring of this shower-bath is tiling. The basin is made of the same material. There are marble slabs on each side of the basin. The basin itself slopes toward the center, with a hole in the center for water to be carried overboard, with a slight curved edge on the outside of the basin. It was considered by experts in Philadelphia, when the work was done aboard the ship that these were perfect basins for a ship [430] such as the "Great Northern" and cannot be improved on.

Q. About what is the size of this basin at the bottom of the shower?

A. I should judge about 30 inches, more or less.

Q. This shower is installed in a room, is it, on the ship? A. Yes.

Q. Can you say whether or not there is another shower in the same room?

A. There is a shower opposite this shower that you are speaking of, and also four showers above on the next deck made of the same material, and on the same principle.

(Testimony of A. Ahman.)

Q. How is this room in which the shower in question was located lighted?

A. With electric light always burning, never out, night and day.

Q. With reference to that will you state whether or not the lights afford sufficient opportunity for a person using this shower-bath to see the condition of the bath and the material of which it is constructed and the manner in which it is constructed?

A. There is plenty of light there, all the light that is necessary. All the light that is necessary for anybody; if anybody looks out where he is going where he is stepping he will see the condition of everything; there is more than plenty of light.

Q. Where is the light in the room located?

A. Right in the center of the deck.

Q. In the ceiling? A. The ceiling, yes.

Q. You say there is another shower in the same room; is that of the same construction and the same dimensions?

A. The same construction, same dimensions; made of the same material and on the same principle.
[431]

Q. You have described at least in part the shower in which the accident happened on February 18, 1916. I will ask you whether or not that shower is in the same condition up to the present time.

A. The same now as it always has been.

Q. What will you say with reference to that on May 1, 1916, when the photographer Mr. Scott took

(Testimony of A. Ahman.)

the photographs which have been offered in evidence here?

A. Nothing has been touched since the ship left Philadelphia.

Q. It was in the same condition on that date as it was on February 18, 1916, then?

A. Yes; the pipes and everything are the same, as far as I know.

Q. What, if any, facilities are provided in this shower for a person using the same to take hold of, and to support himself when taking a bath?

A. In the first place, in entering there is a marble slab on each side before the person reaches the entrance like towards the shower; after he arrives at this point there is a handle right in front of him to grab hold of, and also a bar fastened to these two marble slabs which he takes hold of naturally at first; in this position he can hang himself and lift himself and plant himself right in the basin and don't need to have to step over; he can lift himself over if he wishes to.

Q. I call your attention to the photograph "Claimant's Exhibit No. 3"; please point out on this photograph the location of the marble slab at the side of the bath that you speak of.

A. This is the marble slab here.

Q. On the right-hand side of the picture?

A. On the right-hand side. On the left-hand side there is a marble slab also, only it is standing up in this position. You [432] can grab hold of these two marble slabs until you stand in front of the hole.

(Testimony of A. Ahman.)

When you are there it is handy to the handle in front of you; you don't have to step over; you can lift yourself over, if you wish to.

Q. Captain Ahman, as shown on the photograph "Claimant's Exhibit 3," there appears to be a door-knob and a door at the left-hand side?

A. That is the entrance.

Q. Is that door-knob available for a person to take hold of if they desire to?

A. If they desired to they could, providing they left the door open.

Q. If it is closed, you mean?

A. If it is closed?

Q. Yes. A. No.

Q. Never mind about that now. As shown on that exhibit, there is a metal handle, you say? A. Yes.

Q. In front of the person using the shower-bath?

A. Yes.

Q. How is that fastened?

A. That is fastened right to the marble slab with screws.

Q. State whether or not that is in a position where it can be availed of by a person wanting to use the bath to steady himself, to keep from slipping or falling?

Mr. SMITH.—I object to that question upon the ground that it is leading and that it calls for the conclusion of the witness.

A. Certainly. That is what it is there for. A man could hang himself on that and still it will stay there. It is made fast there you see, with four heavy

(Testimony of A. Ahman.)

screws, right in the marble slab.

Mr. CAREY.—Q. On February 18, 1916, do you remember what the condition of the weather was?

A. Fine weather; we had lovely weather.

Q. Your ship was on a voyage then from San Francisco to Honolulu?

A. From San Pedro to Hilo. [433]

Q. Do you remember seeing Mr. Hutchins the evening that accident happened, that is, on the 18th of February, 1916? A. I do.

Q. Where and under what circumstances?

A. He was acting as a judge in a mock divorce suit aboard the ship in the lounge-room. I was sitting alongside of him; he spoke to me frequently; he never said anything to me about hurting his shoulder during the conversation.

Q. You say there was a mock divorce trial going on there? A. Yes; he was acting as judge.

Q. How many people were present on that occasion?

A. There must have been probably 150 or 200.

Q. Did you see Mr. Hutchins after that during this voyage? A. I don't recollect.

Q. Will you state whether or not Mr. Hutchins made any complaint to you about having received any injury.

A. No; he never spoke to me on the subject.

Q. Have you ever had any complaints from any passengers or any persons about this shower?

A. No, none whatever.

Q. From your experience now on board these first-

(Testimony of A. Ahman.)

class passenger ships and considering the opportunities you have had for observing, what would you say as to whether or not this shower-bath as arranged was safe or otherwise?

A. The shower-bath was arranged to be safe; after great consideration of the matter we built it and put it in place; the shower-bath that is aboard the "Great Northern" now is a bath that is the proper thing.

Q. This firm of William Cramp & Sons, will you state what their reputation and general standing is as a shipbuilding concern. [434]

A. Their reputation for first-class passenger ships is first-class, because they have built the "Kroonland" and "Finland," and "St. Louis" and "St. Paul" and quite a number of other large passenger ships; therefore they are people that have knowledge of these things, of installing shower-baths, bath-rooms and so forth, aboard ships, and know what they are doing.

Q. Are there any other precautions that could be used, in your judgment, to make this shower-bath more safe than it is at the present time?

A. Not that I know of.

Q. You have said that there are other shower-baths in the ship, are there tub baths also?

A. Not unless some private party wants a tub bath.

Q. Is the ship provided with tub baths? A. No.

Q. Has it bath-rooms?

A. We have got bath-rooms.

Q. Are there bath-tubs in these rooms made of porcelain? A. Yes, big porcelain tubs.

(Testimony of A. Ahman.)

Q. How many bath-rooms are there on the ship?

A. For the passengers' use?

Q. Yes.

A. There must be about 24 or 26; I couldn't say for certain.

Q. I just want it approximately. Now, are these tub baths that you speak of available for use by passengers if they desire to use them?

A. Yes, always, whenever they are called for.

Q. What is the fact as to whether or not it is optional with passengers to take a shower-bath or tub bath or not to take any, for that matter?

A. They can have whatever they want to, or let it go if they do not want it; it is optional with the passenger, whether he wants to take a bath or not.
[435]

Cross-examination.

Mr. CATHCART.—Q. How long did I understand you to say you have been a master of a passenger steamship?

A. These last two or three years this time—before I got the “Great Northern” I was also master on different vessels.

Q. My question is how long have you been master of passenger steamships?

A. I have been master of passenger steamships the last—well, call it the “Great Northern.”

Q. So that the first passenger steamship that you have been master of is this “Great Northern” steamship?

(Testimony of A. Ahman.)

A. But I was also master of the "Santa Clara" before that.

Q. When were you master of the "Santa Clara"?

A. In 1911.

Q. Where was the "Santa Clara" then running?

A. She was running between San Francisco and Eureka.

Q. What is her burden? A. About 1500 tons.

Q. Prior to being master of the "Santa Clara" were you master of any passenger steamship?

A. No.

Q. Had you been first officer on any passenger steamship prior to the "Santa Clara"? A. Yes.

Q. What was the steamship?

A. The "City of Peking," "China," "City of Sydney," "City of Panama."

Q. Does that exhaust the list? A. Yes.

Q. The "Peking" and "China" were on the run between San Francisco and Hongkong?

A. Yes; and also part of the time the "Peking" was on the run to Panama, from San Francisco to Panama.

Q. And the other steamships you have named were on the run between San Francisco and Panama?

A. Yes.

Q. Had you been second officer on any other passenger steamship prior to your service as first officer? [436]

A. Yes, I was second officer on the "City of Panama."

Q. On what other steamers, passenger steamers,

(Testimony of A. Ahman.)

had you served prior to your experience as second officer?

A. I was on the "Aztec"; I was on the old "Williamette," and besides in sailing ships.

Q. What was the run of the "Aztec"?

A. She was on the Panama run at the time.

Q. The steamships you have named have been the only ones on which you have served in any capacity during your maritime career? A. Yes.

Q. Now, of those steamships you have named, what ones were equipped with shower-baths? A. None.

Q. The only one being the "Great Northern"?

A. Yes.

Q. You have stated that in reference to the shower-bath in question there were marble slabs on each side? A. Yes.

Q. By which a person could catch hold?

A. Yes.

Q. What is the thickness of those slabs?

A. About an inch and a half.

Q. They are slabs which form the side walls of the bath? A. Of the bath, yes.

Q. As you face the bath the slab at the left is right up and plumb with the wall where the door is, is it not? A. Yes, at right angles with the door.

Q. And plumb up against the wall?

A. Plumb up against the wall.

Q. How can anybody catch hold of that slab?

A. It stands out at a right angle from the wall.

[437]

Q. I call your attention to this slab.

(Testimony of A. Ahman.)

A. That stands at right angles to the wall.

Q. Just wait a minute: calling your attention on "Exhibits 2 and 3" to the slab on the left as you face the bath, that slab is close up to the wall, is it not?

A. No.

Q. Does it stand out?

A. It stands out at right angles.

Q. How far out?

A. The width of the tub, the width of the base of the tub; it stands out at right angles.

Q. I understand that; wait a minute, Captain; isn't it fastened close to this other slab along here?

A. No, it stands right straight out.

Q. That photograph then does not show it right?

A. It stands right out like this (illustrating); here it is; just like that.

Q. You do not quite understand me, Captain; look at the slab on the right.

A. Yes, that is the same thing.

Q. That stands out, and on the other side of it there is nothing so that a person could catch hold of that, could they? A. Yes.

Q. The slab on the left is—

A. —Is the same way.

Q. Stands out? A. The same way.

Q. So that between it and the wall or casing of the door there is some space, is there?

A. Oh, yes; it is at right angles, it is the same as I told you before; it stands out like this; you see, it stands out like that (illustrating). That is the way it stands out; this don't show on the photograph, but

(Testimony of A. Ahman.)

you can see it practically, on the edge; both of them are alike, on both sides; there are marble slabs on both sides; you can catch hold of both of them. [438]

Q. How far out is it from the slab or wall to there (pointing) ?

A. All of 30 inches; standing straight out, at right angles.

Q. What is the space between the slab on the left-hand side as you face the bath-room to which we have been referring, and the slab or wall by the door?

A. There is all kinds of space there because there is an entrance door on both sides of the slab.

Q. When the door is closed does the slab on the left stand out away from the door?

A. At right angles, yes.

Q. That is the door with the knob? A. Yes.

Q. Represented in photographs 2 and 3?

A. Yes.

Q. The rod or bar to which you have referred, is at the top of the bath, is it not? A. Yes.

Q. And on it is swung a curtain?

A. A curtain, yes.

Q. Rubber curtain?

A. Well, it is a cloth curtain.

Q. That being the travelling bar for the curtain?

A. Travelling bar, fastened on rings, yes.

Q. How high is that from the floor of the bath?

A. I should judge about 6 feet.

Q. Six feet?

A. Yes; it is within easy reach for a man to catch hold of; in fact, it is put there with that in view,

(Testimony of A. Ahman.)

for a man entering the bath to catch hold of that besides the handle,—to answer two purposes.

Q. The primary purpose of that is not to run the curtain on?

A. No; it is put there to catch hold of, to grab hold of, as well as that for the purpose of the curtain.

Q. As suggested by my associate, I would like to ask you, in referring to "Exhibit 3," how it is that the door appears in the photograph as close up against the left-hand pipe? [439]

A. Well, that is left open; it is left open in that shower-bath; if it would be closed you would not see it; it would be over at the other end.

Q. That door, then, as shown in the photograph is open, is it?

A. It is open in order to enter the entrance to the shower; that is the way it looks to me.

Q. That is, the door has been left open and swung back against the marble slab?

A. Yes, or towards the marble slab.

Q. The entrance being then from the left through the door as opened as you look at the photograph?

A. Yes.

Q. Are there two slabs there at the left?

A. No, there is one slab on each side, only one slab on each side; I don't know what causes that to look like another slab; that must be a part of the door that looks like that.

Q. These pipes represented in the photographs are the hot and cold water for the shower?

A. Yes, hot and cold water.

(Testimony of A. Ahman.)

Q. What is the height of that handle from the floor of the bath itself, the basin?

A. About 5 feet, I guess; something like 5 feet.

Q. What is the width of that handle, do you know?

A. I should say it must be about 7 inches long.

Q. 6 or 7 inches long?

A. Yes, by 1½ inches wide.

Q. You say that was there on February 18, 1916?

A. Yes.

Q. When did you first observe the handle there, Captain?

A. I could not recollect just exactly, but so far as I know that has been there ever since the ship came out.

Q. Do you have a recollection of seeing it there until after the accident, when you have any special memory of seeing it? [440]

A. It was there before.

Q. You have a special memory of seeing it?

A. Yes.

Q. Was Colonel Sanborn hurt in this bath?

A. Not that I know of.

Q. You never heard of his being hurt? A. No.

Q. In any of these baths? A. No.

Q. Did you ever hear of anyone else being hurt?

A. No.

Q. Did you ever hear of Mr. E. C. Stuart, the President of the Union Savings Deposit Bank of Stockton having been thrown against the steam-pipes and burned?

(Testimony of A. Ahman.)

Mr. CAREY.—I object to that question as irrelevant and immaterial.

A. No.

Mr. CATHCART.—Q. Can you state about how high the rim of the basin is from the floor of the basin?

A. About 2 inches or 2 inches and a half, something like that; I never measured it but I should judge so.

Q. The floor of this basin is the same now as it was February 18th, 1916, is it? A. Yes.

Q. No mat there? A. No.

Q. There were no rubber mats or any kind of mats on the floor on February 18th, 1916?

A. No, because it is not considered sanitary.

Q. You are acquainted with the sister ship, the "Northern Pacific" are you? A. Yes.

Q. With the arrangement of the baths there?

A. Yes.

Q. Of the showers? A. Yes.

Q. Aren't there handles on the "Northern Pacific" in the shower-baths?

A. They are identically the same in both ships.

[441]

Q. Identically the same? A. Yes.

Q. Is the whole arrangement of the showers identical on both ships? A. Yes.

Q. In every respect?

A. In every respect so far as I know.

Q. You state you are familiar with both?

A. Yes.

(Testimony of A. Ahman.)

Q. When did you first learn of this accident to Mr. Hutchins?

A. The first I learned of it was in Honolulu. He wrote a letter to the agent there asking for \$500.

Q. What was the first you knew of it?

A. That was the first I knew of it.

Q. Did you have any talks with any of the steamship crew or stewards in reference to this bath-room?

A. No.

Q. Or the arrangement of it? A. No.

Q. Who had charge of the shower-baths on that trip?

A. We have got bath-room stewards to look out for the bath-rooms. I could not say who was; I don't know the man myself.

Q. Anybody over the bath-room stewards?

A. Chief Steward.

Q. They are all under the chief steward?

A. Yes, all under the supervision of the chief steward.

Q. No one in special authority over the baths themselves except the bath stewards? A. No.

Q. Do you know who was in charge of the baths on this morning? A. I believe the man is here.

Q. On that day?

A. I believe the man is here who had charge on that day.

Q. Do you know his name?

A. I don't know his name.

Redirect Examination.

MR. CAREY.—Q. As captain of the ship, what

(Testimony of A. Ahman.)

supervision do you have over the baths? [442]

A. Well, I have got practically no supervision, as far as that goes, except I make my regular inspections and see that everything is clean and in good condition.

Q. How often do you make those inspections?

A. Sometimes once a day; it depends on the run; if we go on the Honolulu run we have inspections once a day about 11 o'clock.

Q. About 11 o'clock every day on the voyage?

A. Yes.

Q. What do you do on those inspection trips?

A. See that everything is kept clean and in good sanitary condition.

Q. Now, on this particular run to Honolulu or Hilo did you have such inspections daily?

A. Yes, except Sundays.

Q. What was the condition of the ship's baths as to cleanliness?

A. Why, first class all the time.

Q. What was its condition as to being in good order, kept in proper shape?

A. Everything was in proper shape. [443]

Testimony of H. K. Relf, for Claimant.

H. K. RELF, called for the claimant, sworn.

Mr. CAREY.—Q. What is your name?

A. H. K. Relf.

Q. Where do you reside?

A. Portland, Oregon.

(Testimony of H. K. Relf.)

Q. What relation have you to the Great Northern Pacific Steamship Company?

A. I am General Claim Agent.

Q. State whether or not you are familiar with the steamship "Great Northern."

A. I am; I am quite familiar with it.

Q. Do you know the shower-bath in which Mr. Hutchins claims he was hurt on February 18, 1916?

A. I was informed by the bath steward of the particular shower in which he was going to take a bath.

Q. State whether or not in connection with your duties as claims agent it would be for you to make investigation of the circumstances of an accident of that kind. A. Yes.

Q. What is the fact as to whether or not you made an investigation?

A. Yes; when I heard that Mr. Hutchins made a claim against the steamship company on account of having received injuries I investigated for the purpose of ascertaining the fact in connection with the accident.

Q. Did you examine the shower-bath?

A. I did.

Q. How soon after February 18, 1916, about?

A. I think it was on the return from Honolulu.

Q. That is sufficient; I only want to approximate it. How frequently have you seen this shower?

A. I should say once in a month. I have made trips on the boat as frequently as once a month, and either the "Great Northern" or "Northern Pacific" is laying at Flavelle.

(Testimony of H. K. Relf.)

Q. You say once a month: during what periods of once a month; how long have you had your inspections once a month? [444]

A. I do not make regular inspections or anything of that kind; I look over the ships when I am on them.

Q. What I am getting at is, how frequently you have seen that bath? Have you seen it once or twice or a dozen times?

A. I have made particular inspection of it; I should say, 6 or 8 times since this accident happened.

Q. Did you employ the photographer to make these photographs, Claimant's Exhibits 1, 2 and 3?

A. I did.

Q. Did you go with him to make the photographs?

A. I was present when the photographs were taken.

Q. I wish you would describe the shower-bath?

A. The room in which these shower-baths are located is on the C deck, almost amidships. The entrance to the room is from the passageways on both sides of the ship. There are two showers in this room on the C deck opposite each other. The base or receptor of the shower-bath is 30 inches square. The rim is 6 inches high, the top of the rim being 6 inches above the tile floor out of the bath-room. The bottom of this rim is about $3\frac{1}{2}$ inches in width; from the edge of the receptor to the waste in the middle of it there is a fall of $\frac{1}{4}$ of an inch in a distance of 11 inches or $11\frac{1}{2}$ inches. The shower in which Mr. Hutchins went to take his bath, as I was

(Testimony of H. K. Relf.)

informed by the bath steward, was located upon the port side of the ship. Upon entering that shower there would be a marble slab on his right hand; the slab is about one inch in thickness, 76 inches high and 32 inches wide. On the left of the shower-bath there is another marble slab which is up against the wall of the heater-room, and the door which is shown in the photograph is the door to the heater-room. Then on the marble slab to the left of a person as they are facing the shower-bath are three [445] pipes with valves which are used in regulating the flow of the water and the temperature of the water; the back wall of the shower is another marble shower to which is attached a grab or a hand-hold which is 60 inches above the floor of the room. At the upper part of the slab is a rod about an inch and a quarter or an inch and a half in diameter on which a curtain is suspended by means of rings, opposite to this particular shower-bath compartment is another identically the same in construction. There is a space of 26½ inches between the two receptors.

Q. This door to the heater-room, is that open or shut? A. Shut.

Q. Is it kept shut?

A. I suppose so except whenever the attendant or whoever regulates it has occasion to use it.

Q. Entering the shower-bath what facilities present themselves to a person desiring to take a bath to safeguard from falling?

A. There is a marble slab on his right hand, a rod which is above him about 72 inches from the floor;

(Testimony of H. K. Relf.)

the three pipes that are on his left hand; the first pipe is a cold water pipe; he could catch hold of that; and then by reaching over to the grab on the back wall of the shower-bath, I would say that would be the best means of protecting himself or steadying himself while stepping into the receptor.

Q. How about the door-knob that you speak of; is that available?

A. It is available; it could be used for that purpose.

Q. The basin of the bath you say is about 30 inches square?

A. The outside dimensions is 30 inches.

Q. Where is this overhead pipe that you speak of, 72 inches above the floor; is that at the forward part of the bath as you enter?

A. That is right at the opening. [446]

Q. What about the curtain that hangs there—is there a curtain? A. Yes.

Q. That slides on rings, does it? A. Yes.

Q. What would you say, Mr. Relf, as to whether or not a person could if he wished take hold of the curtain itself? A. Yes, he could.

Q. What material is that curtain made of?

A. It seems to me it is a cloth treated in some way to make it waterproof; almost a coating of rubber on it; I do not think it is rubber; it is not a rubber curtain.

Q. The floor of the bath is composed of what material? A. Tiling.

Q. Can you describe the slope of the floor?

(Testimony of H. K. Relf.)

A. The floor itself of the bath-room is level.

Q. I am speaking of the shower?

A. That is porcelain; the base or receptor of the shower-bath is porcelain.

Q. You call it a receptor; how much of a slope is there in there? A. One-quarter of an inch.

Q. What is that slope for?

A. For water to flow.

Q. Drainage?

A. Drainage; it slopes toward the waste in the middle of the receptor.

Q. Did you observe anything about that base or receptor that was difficult to stand upon, or that would be more difficult than any other porcelain slab would be to stand upon?

A. No, it is the same material as in the bath itself.

Q. Did you notice anything that would indicate whether it was unsafe or dangerous?

A. I could not see anything dangerous about it.
[447]

Q. What would you say as to whether or not there was any faulty construction in that respect, and state in what respect if at all.

A. I cannot conceive of any improvement that could be made.

Q. Did you observe any condition there that would indicate to your mind that there was any likelihood of a person using the bath to slip or fall?

A. So far as I could see there was every safeguard, every facility that a person would want to use in order to protect himself, to keep from falling.

(Testimony of H. K. Relf.)

Q. How was this metal handle that you speak of fastened?

A. It is fastened by screws to the marble slab.

Q. What is the fact as to whether or not it was sufficiently strong to sustain the weight of a person should they take hold of it?

A. It is fixed, immovable, against the slab.

Q. These facilities for taking hold that you have described, state whether or not they were visible or could be perceived by a person making use of the bath?

A. They could plainly be seen; the bath-room is lighted by a powerful electric light which is in the middle of the ceiling and the rays from the light plainly show all the conditions, even inside the shower-bath stalls.

Cross-examination.

Mr. CATHCART.—Q. What is your age, Mr. Relf? A. 45.

Q. You are a resident of Portland, are you?

A. Yes.

Q. Is that your native place?

A. I was born in Wisconsin.

Q. How long have you been connected with the steamship company?

A. Since it commenced operations.

Q. That was when?

A. In January, 1915; the steamship "Great Northern" [448] arrived in San Francisco in February, and my employment as general claims agent of the steamship company was made at that time.

(Testimony of H. K. Relf.)

Q. Had you ever been employed by the Great Northern Railroad Company prior to that time?

A. No—just for a few months about 20 years ago. In explanation of my principal duties, they are as general claim agent of our rail lines, the Spokane, Portland and Seattle.

Q. Part of the Great Northern system?

A. So considered, yes; affiliated with the Northern Pacific and Great Northern Railway.

Q. This steamship was run in connection with that between that and Flavel—

A. (Intg.) Between San Francisco and Portland; the Spokane, Portland & Seattle operates a train from Flavel to Portland.

Q. As a matter of fact, you did not inspect or examine these bath-rooms until after you had received a report of the accident?

A. Not that particular bath-room, no; I had occasion to use the shower-baths on the ship.

Q. On the "Great Northern"?

A. Yes; I never used that particular one.

Q. I mean on that deck? A. No.

Q. On the upper deck?

A. I used the shower-baths on "A" deck in the bachelor rooms; the shower-baths are the same as the public showers are on the "B" and "C" decks.

Q. You never were in this bath-room until after the report of the accident?

A. Yes, I had been in the bath-rooms before but not to make any particular inspections of them.

Q. It was after the report of the accident, was it

(Testimony of H. K. Relf.)

not, that you [449] made this examination and these measurements? A. Yes.

Q. To which you have testified? A. Yes.

Q. When was that done?

A. I think that I am safe in saying I made my first inspection on March 12 or 13, when the ship was in port at San Francisco. By referring to my file, I could tell when I first heard of the accident, and I know that I took the first opportunity to make this inspection. I was in San Francisco at that date, and I think the "Great Northern" was in San Francisco at that time; I am quite certain that it was on that date.

Q. That would be March 13, 1916? A. Yes.

Q. You have not given us, as I remember it, the dimensions of the receptor or basin inside of the rim, the inside dimensions.

A. The rim is $3\frac{1}{2}$ inches in width at the bottom, and the inside of the rim slopes one-half inch, so that at the top of the thickness of the rim would be about three inches—the inside of the rim slopes $\frac{3}{8}$ ths of an inch instead of $\frac{1}{2}$ an inch.

Q. You have not, then, the dimensions of the basin inside at the bottom, have you?

A. It would be 23 inches square.

Q. From the inside edge all around it is 11 inches to the waste or drain-pipe in the center of the receptor or basin?

A. To the metal; you see, the waste is about 3 inches in diameter; there is a little metal cap with holes in it through which the water runs.

(Testimony of H. K. Relf.)

Q. This rod up above at the entrance of the shower is the rod on which the curtain runs, is it not?

A. The curtain is suspended from that rod; yes.

Q. That is what the rod is there for, is it not, in order to run [450] the curtain on?

A. That is one of the purposes; yes.

Q. Do you want us to understand that that rod up above there is put there for the purpose of catching hold of by a person entering the shower-bath?

A. I would say that is one of the uses for which it was intended.

Q. One of its purposes? A. I think so, yes.

Q. Now, these pipes that you speak of, they are there for the purpose of running the water into the shower-bath, are they not? A. Yes.

Q. And they are hot and cold, you say?

A. Yes.

Q. Hot and cold water? A. Yes.

Q. The first pipe, you say, contains cold water?

A. Cold water.

Q. And the second pipe, hot water?

A. No, the third pipe is the hot-water pipe.

Q. What is the middle pipe?

A. I think that the water comes in and then passes through the valve, and I believe that the middle pipe is where the water goes from the valve to the shower, whatever they call that at the top that the water comes from.

Q. The purpose of these pipes is the conveyance of water into the shower, is it not? A. Yes.

Q. They are not there for the purpose of being

(Testimony of H. K. Relf.)

caught hold of by anybody entering the bath, are they?

A. They are there and could be used for that purpose.

Q. They could be, and especially the hot one?

A. No, I would not want to use the hot one.

Q. Don't you know as a matter of fact that a Mr. Stuart, of Stockton, was thrown against the hot-water pipe and severely burned?

A. I never heard of it.

Q. Or burned—never heard of it?

A. No, I never received any report of any such accident. [451]

Q. Never heard of it?

A. I heard that one man—I don't know who it was—that some man at some time was burned by coming in contact with the hot pipe.

Q. In this bath?

A. I don't know whether it was that particular one. I never received a report on it.

Q. Either one of the two on the "C" deck, was it not? A. I don't know.

Q. Now, this curtain slides along this rod, does it not?

A. It is suspended on rings and the rings slide.

Q. So that it will slide right along? A. Yes.

Q. You think a person could catch hold of that curtain as a measure of precaution so as to prevent falling?

A. I think so, yes, assist in steadying him.

Q. How high is that door-knob from the floor of

(Testimony of H. K. Relf.)

the bath-room, the tile flooring?

A. I would say it is about 32 or 34 inches from the floor.

Q. Now, that door-knob is there for the purpose of opening the door, isn't it? A. Yes.

Q. It is not there for the purpose of being caught hold of by anybody entering the bath, is it?

A. I do not suppose that would be the primary use, no. The door-knob is for use in opening the door.

Q. And the curtain rod is generally for the use of running a curtain on it, isn't it? A. Yes.

Q. Where is this electric light that you speak of? Is it in the ceiling between the two baths?

A. No, it is about in the middle of the room; it would be about 30 inches from the slab that forms the side of the shower-bath. [452]

Q. I show you Claimant's Exhibit 3. Can you give us an idea as to where that light would be, opposite this door, or how?

A. Here is the opening between the two stalls, or two showers; it is right opposite the middle of that opening, and I should say about 30 inches from the side of the shower-bath stall.

Q. That would be 30 inches beyond the slab shown on the right of Claimant's Exhibit 3? A. Yes.

Q. The measurements that you have testified to, were they made by yourself? A. Yes.

Q. How did you arrive at the fall between the waste and the edge of the bowl or basin?

A. I took a straight edge and laid it across the

(Testimony of H. K. Relf.)

top of the receptor and then I measured down from this straight edge of the bottom of the receptor in the middle and also on the edge.

Redirect Examination.

Mr. CAREY.—These photographs, Claimant's Exhibits 1, 2 and 3, that have been called to your attention on cross-examination, are the photographs that were taken by Mr. Scott at your request?

A. Yes.

Q. State whether or not they correctly represent the situation. A. They do.

Q. Are they accurate photographs of this shower?

A. Yes.

Q. You say there are a number of shower-baths on this ship; approximately how many?

A. On the "C" deck there are two public shower-baths; on the "B" deck there are 4, and in the bachelor apartments, there are 14 bachelor rooms, and I would say that there are 8 shower-baths.

Q. What is the fact as to whether or not these are of similar construction or otherwise to the one in question?

A. They are all the same; I have not been able to notice any difference in them. [453]

Q. What other bath facilities are furnished on this ship?

A. There are tubs that are for the use of passengers in general, in addition to the tub baths which are with the suites.

Q. What kind of tub baths are they?

(Testimony of H. K. Relf.)

A. They are porcelain tubs. The sides are about the same height as an ordinary bath-tub when a person is home or in a hotel.

Q. Have you a diagram of the floor arrangement of this shower-bath in question? A. Of the room?

Q. Yes.

A. I have just a rough sketch that I made.

Q. I thought maybe you had one.

A. No, I never made one. [454]

Testimony of John B. Morris, for Claimant.

JOHN B. MORRIS, called for the claimant, sworn.

Mr. CAREY.—Q. State whether or not you were an officer on the steamship "Great Northern" on February 18, 1916.

A. Yes, I was chief engineer.

Q. How long had you been chief engineer prior to that time? A. Do you mean on that ship?

Q. Yes, on that ship? A. Since June, of 1914.

Q. Have you continued as chief engineer of that ship say up to yesterday? A. Yes.

Q. During that time has the ship been in constant service, or otherwise?

A. It has been in constant service, except for two weeks while we were giving her engines an overhauling.

Q. Do you know the shower-bath in which Mr. Hutchins claims that he was hurt? A. Yes.

Q. I wish you would describe it briefly.

A. Well, the particular shower in question is

(Testimony of John B. Morris.)

about 30 inches square, enclosed, and it is about seven feet high, I should judge; both sides of it are enclosed by a marble slab, one is open, and the other is against the wall; it has a hand-hold in back of it, probably five feet from the ground; it has a curtain rod which is very heavy, and very heavily secured, about six feet high.

Q. At the front of the bath?

A. At the front of the bath; and then it has the pipes that supply the shower; there is one cold-water pipe on the outboard side of it, and on the inside is the hot-water pipe, and then the central pipe that leads up and back to the shower itself, and that is controlled by a valve with a handle on it probably 6 inches long; the base of it is porcelain, and I should say it is about 5 inches deep, with a drain hole in the center of it. [455]

Q. What is the fact as to whether the floor slopes toward the drain hole or otherwise?

A. It does slope.

Q. How much?

A. I should say about one-half inch.

Q. Now, what facilities are there for a person using the bath to safeguard against slipping or falling?

A. The handhold in the back and the curtain pole which is put in there very securely, on account of a person grabbing that curtain and tearing it down—it never had anything done to it that I know of, and then at the left-hand side the knob of the door to the heater-room, not intended to be, but would be avail-

(Testimony of John B. Morris.)

able; and then of course these pipes, and the handle.

Q. On the right-hand side, you say there is a slab of marble? A. Yes.

Q. Is that available for that purpose?

A. Yes, indeed.

Q. What would you say, Mr. Morris, as to whether or not there was any danger of a person using that bath having an accident?

Mr. CATHCART.—We object to that as leading and calling for the conclusion of the witness.

Mr. CAREY.—I will put another question:

Q. What opportunity, if any, would a person have in using that bath to see the facilities which you have described and thereby prevent slipping or falling?

Mr. CATHCART.—Contending that each and every objection with reference to questions calling for the conclusion of the witness is reserved under the stipulation, yet, as a matter of precaution, we now object to the question as asked, on the ground that it calls for a conclusion of the witness.

Mr. CAREY.—I will ask another question: Q. Describe the condition of this shower-bath with reference to the facilities afforded to safeguard against accident and with reference to the lighting, [456] and the opportunity that persons using the baths would have to see what facilities were afforded.

Mr. CATHCART.—We object to that as being in itself a double or triple question.

A. The place is flooded with light; therefore anyone could see anything inside there.

Mr. CAREY.—Q. Where is the light located?

(Testimony of John B. Morris.)

A. I should say the light is in the middle of the entire shower-room.

Q. Have you observed anything about that shower-bath that would be likely, in your judgment, in any manner to cause a person using the same to slip or fall?

Mr. CATHCART.—Objected to as calling for a conclusion of the witness and as leading.

A. No.

Mr. CAREY.—Q. Do you know Mr. Hutchins?

A. Yes.

Q. Do you remember the time when he was supposed to have been hurt there on February 18, 1916?

A. Yes.

Q. Did he say anything to you about it?

A. Yes, he told me that he had fallen in the shower.

Q. Did he tell you how he happened to fall?

A. The way he spoke of it to me was that in stepping there he had stepped on the rounding and lost his balance through that—the rounding on the bottom of the base.

Q. Did he say anything to you as to what he claimed with reference to the liability of the company?

A. When he mentioned it to me I said to him, "Why didn't you hold on to something? You are on a ship; you are not on shore."

Mr. CATHCART.—We move to strike that out as being irresponsible.

Mr. CAREY.—Q. What did he say?

(Testimony of John B. Morris.)

A. Well, he complained of the way that that base was built; he said that that should be [457] of absolutely square corners.

Q. Did he say anything else? A. No.

Q. Specifically, did he make any claims to you that there should be a rubber mat in the bath?

Mr. CATHCART.—Objected to as leading.

A. No.

Mr. CAREY.—Q. Do you know whether Mr. Hutchins wears glasses? A. Yes.

Q. Do you know whether or not he had his glasses on at the time he took his shower-bath?

A. That I don't know.

Q. Since you have traveled on the "Great Northern," how many passengers had she handled?

A. I don't know the exact figures, but I always remember one thing, that in the summer of last year, in three months the two ships carried 54,600 people.

Q. How frequently are the shower-baths used on that ship?

A. That I would not be able to tell; they use them all the time; a continuous stream of people using them.

Q. Has any complaint been made to you as an officer of that company about the manner of construction or the condition of the baths?

A. No; that is the only complaint I ever heard.

Q. Have you ever known of any complaint being made that the bath is dangerous? A. No.

Q. What is your opinion, from your observation and experience as an officer on board ship, as to

(Testimony of John B. Morris.)

whether this bath is properly and safely constructed or otherwise?

Mr. CATHCART.—I object to that as calling for a conclusion of the witness and leading.

A. I cannot see myself—I would be the one to suggest an improvement if any was necessary there, and I have never felt the need of doing so.

Mr. CAREY.—Q. As chief engineer on board this ship, is it a part of your duty to make inspections of the baths, and particularly [458] this bath in question?

A. I have a man that does that; if anything would be wrong, he would report it to me.

Q. What is the position of this man?

A. He is a plumber.

Q. You have had experience on other ships, have you? A. Yes.

Q. Have you ever seen any baths that were differently constructed from these? A. No.

Q. Did you ever know of any shower-baths being provided with mats of rubber or other material?

A. No; I think that would be rather unsanitary.

Q. What would be the fact as to whether or not it would be more dangerous or otherwise?

A. I don't think it would be more dangerous,—if one had soap on their feet, soapy water, that would help to slide them on rubber.

Cross-examination.

Mr. CATHCART.—Q. You are chief engineer of the "Great Northern"? A. Yes.

Q. How old are you? A. 45.

(Testimony of John B. Morris.)

Q. How long have you been in maritime service?

A. 18 years.

Q. As engineer?

A. Well, I have been an engineer for probably 16 years.

Q. Assistant and then chief?

A. I have been chief 11 years.

Q. What steamers?

A. On the "Siberia," the "Rose City," the "Lurline," and the "Great Northern," and "Northern Pacific."

Q. When were you on the "Siberia"?

A. I was chief of her for 4½ years, between 1905 and 1910.

Q. As chief engineer, have you duties in connection with the bath-rooms?

A. Only that I have the upkeep of them, that is, the water supply, and so on.

Q. But merely to see that the water supply is right?

A. To see that the water supply is right. [459]

Q. Nothing else? A. Nothing else, at all.

Q. You do not inspect the bath-rooms to see if they are clean, or sanitary, or safe, or anything else?

A. No.

Q. And never have as engineer, chief or assistant, or otherwise, have you?

A. No. It would be my duty as an officer of the ship, if I saw anything in an unsafe condition to call someone's attention to it.

Q. Yes, of course, if that should come under your

(Testimony of John B. Morris.)

notice. Do you know the date on which Mr. Hutchins was hurt?

A. I don't remember particularly.

Q. Do you remember the time of day?

A. I remember about the time. I remember it was in February.

Q. The time of day?

A. Yes, it was before supper in the evening.

Q. When did you first learn of it?

A. At the supper-table; they sat alongside of me.

Q. Mr. Hutchins?

A. Mr. Hutchins and Mrs. Hutchins, his wife, sat alongside of me.

Q. And he told you, then, of having been hurt in one of the shower-baths? A. Yes.

Q. This conversation that you speak of was at the supper-table, was it? A. Yes.

Q. Who was present besides yourself and Mr. Hutchins?

A. I don't remember the other people at the time.

Q. Did you examine the shower that evening?

A. Not that evening, but the following morning I went in there and took a look at it.

Q. Who with, anybody? A. Just myself.

Q. Yourself alone? A. Yes. [460]

Q. That door that leads out of this shower-bath opens out, does it not?

A. It opens this way. Here is the heater-room; the entrance to the shower-room is over on this side, and over here, that is the entrance to the heater-

(Testimony of John B. Morris.)

room, where the heaters are located, that is always closed.

Q. Do I understand it opens toward the bath, then? A. Yes.

Q. On these steamers of which you have spoken as serving as assistant engineer or chief engineer, did they have showers? A. No.

Q. So the first steamship on which you have served that had showers is the "Great Northern"?

A. Yes, "Great Northern" and "Northern Pacific."

Q. You have been on the "Northern Pacific," too?

A. Yes.

Q. Those two steamers are the only ones you have served on where there have been showers?

A. Yes.

Redirect Examination.

Mr. CAREY.—Q. What was the condition of the weather on the day in question?

A. The ship was rolling; not very much; I should say a roll of probably 4 degrees.

Mr. CATHCART.—We object to this as not being redirect examination and move to strike out the last answer.

Mr. CAREY.—Q. What was the condition of the weather as to whether it was stormy that day, or otherwise?

Mr. CATHCART.—Same objection, as not being redirect examination.

A. I should not say it was stormy; she had a long,

(Testimony of John B. Morris.)

gentle roll. I think the weather was pleasant that day.

Mr. CATHCART.—The "Great Northern" doesn't roll much, anyway, does it?

A. All ships roll if they get the proper wave length. [461]

Testimony of A. Ahman, for Claimant (Recalled).

A. AHMAN recalled.

Mr. CAREY.—Q. Do you desire to make a correction of the testimony you gave this forenoon? If so, in what respect?

A. Yes, in regard to the photographs. I was always thinking about the port side of the ship instead of the starboard side.

Q. As a matter of fact, on the left side of this shower-bath as you enter it, is there a marble slab?

Mr. CATHCART.—I object to that as leading.

A. Yes.

Mr. CAREY.—Q. State whether or not the marble slab is separate from the wall or is attached to the wall.

A. As you enter it first it is separate from the wall, but the after one, it is close up to the wall.

Q. The one on the left-hand side as you go in is the one that is close to the wall, then, is it?

A. Yes, that is the after one.

Q. In giving your testimony this forenoon as I understood it, you described the slab on the left-hand side as though it were available to take hold of

(Testimony of A. Ahman.)

by anyone using the bath. Do you wish to make any correction as to that?

A. The one on the starboard side is the one that you catch with the right hand; the after one is against the wall.

Cross-examination.

Mr. CATHCART.—Q. Your attention was called to the fact that you had made an error in your testimony? A. Yes. I got thinking about it.

Q. Who told you about it?

A. I got thinking about it.

Q. Didn't anybody speak to you about it?

A. No.

Q. You were sitting here and heard the testimony of the other witnesses as to the position of that slab, weren't you? [462]

A. Yes. I had it in mind it was the other side.

Q. You heard Mr. Relf testify as to the position of that slab? A. Yes.

Q. And the engineer, Mr. Morris? A. Yes.

Q. When you gave your testimony in the first instance, you were thinking about the starboard side?

A. About the starboard side; that is the reason I could not get that line; you remember that dotted line, that is the bulkhead that runs right across, and of course there will be a bulkhead on the other side as well.

Q. But when you did give your testimony this morning, you spoke about both sides, didn't you?

A. No, I did not.

(Testimony of A. Ahman.)

Q. Didn't you speak about both sides? A. No.

Q. I thought you said that the one to the right as you went in was separate, and the one to the left also?

A. No; this side, the right side, that is where you go in through the entrance, and the left-hand side of that shower is where the bulkhead crosses right across by the two of them.

Q. I would like to know when it was the steamer was laid up at the time you were overhauling her?

A. That was the 15th of May; we arrived on the 13th and the ship was taken to the Union Iron Works, I think, on the 15th of May, and we started out again on June 1st, this year. [463]

Testimony of S. W. Jamieson, for Claimant.

S. W. JAMIESON, called for the claimant, sworn.

Mr. CAREY.—Q. Where do you reside, Mr. Jamieson? A. Glendale, California.

Q. Were you a passenger on the "Great Northern" at the time Mr. Hutchins claims he was hurt in a shower-bath on the 18th of February, 1916?

A. I was.

Q. What room did you have on the ship, do you remember? A. Room 345.

Q. Where is that with reference to the shower-bath on the "C" deck?

A. It is across the passageway, and about, I should think, 50 feet forward.

Q. Did you have occasion to use the shower-bath?

A. I did.

(Testimony of S. W. Jamieson.)

Q. Where were you going when you were aboard the ship at that time, from what place to what place?

A. From San Francisco to San Pedro, to Hilo, and to Honolulu, and back to San Francisco.

Q. You returned on the ship?

A. I did—not on that trip; the next succeeding trip.

Q. Where did you lay over? A. Honolulu.

Q. Did you know Mr. Hutchins, the libellant in this case? A. I met him on ship board.

Q. Going or coming? A. Going.

Q. Before or after his accident?

A. I met him before his accident.

Q. Did you see him afterwards? A. I did.

Q. Did he tell you he was hurt? A. He did.

Q. You say you used this shower-bath. I wish you would describe the shower-bath as fully as possible as it was on the 18th of February, 1916.

A. You mean the entire bath-room?

Q. Describe the bath-room, and the shower in the bath-room. [464]

A. The bath-room is off the passageway that runs lengthwise of the ship. There is a door that leads into the bath-room, opening in, and there is a very high threshold that you have to step over to get into it. In the bath-room were two shower-baths, some washstands and places for towels and one thing and another. The shower-baths were two compartments, about the ordinary size of a shower-bath, with overhead showers, curtains, a valve at one side for mixing the water to the proper temperature, or

(Testimony of S. W. Jamieson.)

turning it on or off, and on the open side there was a sill raised from the main floor of the bath-room I should say approximately five inches, or such a matter; the three walls of this shower were of marble slabs and the bottom was some sort of tile or China-ware; between the two shower-baths was a door which led into some sort of heating arrangement for the water supply; the light in the bath-room was an overhead light, and owing to the light-colored paint and flooring in the bath-room, the light was diffused all over.

Q. Did you notice whether any facilities were provided for taking hold of to prevent slipping or falling, and if so describe them.

A. I could not state whether or not there was anything further than the valve, that being all I had occasion to use.

Q. You mean on the pipes?

A. The valve on pipes.

Q. I wish you would look at the photograph, Claimant's Exhibit No. 3, state whether or not that correctly represents the bath as it was at that time.

A. To the best of my recollection it does.

Q. I call your attention to the edge of the marble slab at the right hand of this picture. Will you state whether or not that was there at the time?

A. It was.

Q. What would you say as to whether or not it would be practicable [465] for a person using the bath to take hold of that to steady himself if he found it necessary to steady himself?

(Testimony of S. W. Jamieson.)

A. Yes, a person could so steady himself on so going into the bath.

Q. Are the valve handles you spoke of in your testimony shown in this exhibit, and if so point at what place.

A. The valve handle is on the left-hand wall as shown in this picture, about half way up.

Q. Now, will you state whether or not you had any difficulty in using this bath? Did you slip or fall?

A. I did not.

Q. What would you say as to whether or not there was danger of falling in using the bath?

Mr. CATHCART.—Objected to as leading and calling for the conclusion and opinion of the witness.

A. I should say that there was no more danger in using this shower-bath than any other shower-bath that I have ever used.

Mr. CAREY.—Q. Could you suggest any precautions that should be taken that were not taken to make this bath more safe than it was?

Mr. CATHCART.—Objected to as calling for an opinion of the witness.

Mr. CAREY.—I will withdraw the question.

Q. Did you notice at that time this rod at the top of the bath? A. Yes.

Q. What is the fact as to whether it was there at the time mentioned?

A. There was a rod there at the time.

Q. Did Mr. Hutchins tell you how this accident happened?

A. All that I recall is his telling me that, in reply

(Testimony of S. W. Jamieson.)

to my asking him how he had hurt his shoulder, that he had slipped and fallen, stepping into a shower-bath. [466]

Q. Do you remember a mock divorce trial that was carried on by the passengers of the ship on February 18, 1916? A. I do.

Q. Do you remember who presided at that trial?

A. Mr. Hutchins took the part of the judge and presided.

Cross-examination.

Mr. CATHCART.—Q. Did you use the shower frequently that trip?

A. As I remember it, at least three times.

Q. On the way over? A. On the way over.

Q. And you did not, on entering it, catch hold of this slab to steady yourself, did you, at any time?

A. As I recall it, I never had occasion to catch hold of anything on using the shower-bath.

Q. This rod that you noticed, or about which you have spoken, is the rod on which the curtain runs that shuts in the bath from the room, itself?

A. Yes, there is a curtain on the rod.

Q. You did not notice the handle that is shown on the photograph there at all, did you?

A. I could not say as to whether that was or was not there at the time. I had no occasion to use it.

Q. You did not notice it?

A. No, I did not particularly notice it.

Q. You saw the valve?

A. I did; I used it.

Q. In turning on the water? A. Yes.

(Testimony of S. W. Jamieson.)

Q. That is the only reason—that is the only purpose for which you used it, turning on the water?

A. Turning it on and turning it off, changing the temperature.

Q. What is your business, Mr. Jamieson?

A. I am a rancher.

Q. In Glendale? A. At Glendale.

Q. You became acquainted with Mr. Hutchins on the trip down? A. On the trip down.

Q. Did you come back on the “Great Northern” on its next trip? [467]

A. You mean by the next trip, the return trip of the boat?

Q. No, not the round trip, but the next trip after that?

A. The next trip after that, I did.

Q. And used the shower-bath on that return trip, did you? A. I did.

Q. Did you use these two showers, or confine yourself to any particular one of them—there are two opposite each other.

A. I could not state positively whether I used both or only one.

Q. Neither on the trip going or on the trip returning did you notice the handle on the rear slab?

A. It might have been there and I would not notice it.

Q. I am asking you whether you did notice it.

A. I could not state as to whether or not it was there.

(Testimony of S. W. Jamieson.)

Q. And you did not notice the handle on either the trip over or the trip back? A. Not specifically.

Q. Not at all? A. No. [468]

Testimony of Charles Wall, for Claimant.

CHARLES WALL, called for the claimant, sworn.

Mr. CAREY.—Q. Are you an officer on the "Great Northern" steamship? A. Yes.

Q. What officer? A. Chief officer.

Q. How long have you been chief officer on that ship?

A. Since last January—January, 1916.

Q. Were you chief officer on that ship in February, 1916? A. Yes.

Q. Do you know the condition of the shower-bath on the "C" deck on February 18, 1916?

A. I do, yes.

Q. What was its condition with reference to its condition at the present time; has there been any change in it? A. Absolutely none.

Q. Now, will you describe it as it was on February 18, 1916?

A. The bath-room extends across the ship, from one passageway to the other, with a door leading into it from either passageway, and the two showers are placed in the after corner of the bath-room, one at each side of the bath-room, with a passageway between them; the shower is constructed of three marble slabs, one in each corner of the room, and one extending at right angles to the bulkhead or parti-

(Testimony of Charles Wall.)

tion of the bath-room as it were; a door leading into a heating-room between the two showers. There is a tray on the floor of the shower extending from the floor probably about five to six inches, outside measurement; a hand-grab, hand-hold, at the rear of the shower, approximately five feet from the floor; also a curtain rod suspending a curtain at the entrance of the shower, constructed of heavy brass. Then to the left, facing the rear of the shower, are the water-pipes and valves for turning on the water and adjusting the water according to requirements.

Q. I wish you would look at the photographs, Claimant's Exhibits [469] 1, 2, and 3, and state whether or not those correctly represent the shower in question? A. They do; yes.

Q. The left-hand side of the picture, Claimant's Exhibit No. 2, appears to be a door-knob; will you state whether there was such a door-knob there?

A. Yes, and still there in the same position and same condition.

Q. Would it be practicable for a person desiring to use the bath to hold on to that door-knob if he desired to do so?

Mr. CATHCART.—Objected to as being leading and calling for the conclusion and opinion of the witness.

A. It would.

Mr. CAREY.—Q. On the right-hand side of this picture appears to be the edge of a marble slab; was that there at the time spoken of? A. Yes.

Q. What would you say as to whether or not that

(Testimony of Charles Wall.)

would afford means of holding on, in taking a bath?

Mr. CATHCART.—The same objection as to the last question.

A. Yes, it would be possible to hold on to it.

Mr. CAREY.—Q. Describe that slab with reference to its location and its convenience for the purpose of taking hold of it.

A. Well, in stepping into the shower, it seems to me the first thing that a person would take hold of; naturally, a man will put his hand up and touch that slab or hold on to it in stepping into it; I think that nine men out of ten would do that without any conscious effort or thinking about it.

Q. On the left-hand side of this picture appear to be some perpendicular pipes; will you please describe them, especially with reference to their location and practicability as a means of taking hold of it getting into or in using the baths?

A. These water-pipes are about the height, we will say, of five [470] feet, I imagine, from the floor, and quite easy to be taken hold of in entering the bath; in case of a man losing his balance, I think it would be the first thing he would catch hold of with his left hand.

Q. In this same exhibit, I call your attention to what appears to be a handle fastened to the marble wall directly opposite the entrance to the shower-bath; will you state whether that was there in February, 1916? A. Yes, that was there.

Q. Now, describe that handle?

A. It is made of heavy bronze or brass and fas-

(Testimony of Charles Wall.)

tened on to the rear marble slab with heavy screws, for the purpose of giving a secure hold.

Q. How was this bath-room lighted?

A. By overhead lights from the ceiling.

Q. What was the state of the light, as to whether or not a person using the bath would have light to see and to use the bath conveniently?

Mr. CATHCART.—The same objection, as being leading and calling for the opinion and conclusion of the witness.

A. Sufficient light; it would give him plenty of light in all corners, and all over the room.

Mr. CAREY.—Q. There was no rubber mat on the bottom of this shower-bath?

A. Not at that time, that I know of; as far as I saw, none.

Q. Was a rubber mat ever used in these shower-baths?

Mr. CATHCART.—Objected to as being leading and calling for the opinion and conclusion of the witness, and no proper foundation laid.

A. Not that I know of.

Mr. CAREY.—Q. Did you ever see any rubber mats used in such shower-baths? [471]

Mr. CATHCART.—Same objection.

A. No.

Mr. CAREY.—Q. About how many people used these shower-baths on the ship?

A. That I have no means of knowing, not being directly in touch with the passengers.

Q. Have you ever heard any complaint that they

(Testimony of Charles Wall.)

are unsafe, or not properly constructed?

A. No.

Q. What are your duties as first officer, with reference to inspecting and examining the shower-baths?

A. We have our inspections every day, and if we find anything wrong, or equipment broken, we have it tended to, and report it to the head of the proper department.

Q. Have you ever found anything wrong with this bath, or made any report concerning it?

A. No.

Q. Have you ever noticed anything that led you to think this bath was dangerous in any respect?

Mr. CATHCART.—Objected to as being immaterial, irrelevant and incompetent, leading, calling for the opinion and conclusion of the witness.

A. No.

Mr. CAREY.—Q. Have you ever had occasion to report concerning any defect in this bath?

Mr. CATHCART.—Same objection.

A. No.

Mr. CAREY.—Q. Now, as first officer of the ship, will you state whether your duties include having a log kept which would show the weather conditions from day to day on the voyage of the ship?

A. Yes.

Q. Was such a log kept on this ship? A. Yes.

Q. Just tell how the log is kept.

A. It is written up at the end of a watch, the regular watches.

Q. Who writes it up?

(Testimony of Charles Wall.)

A. The chief officer, or one of the officers [472] detailed by him to write it up.

Q. You are chief officer, and you either write it or have someone do it under your direction?

A. Yes.

Q. Where is the first entry made with reference to the weather conditions—what book is it kept in?

A. It is kept in the pilot-house log-book.

Q. Is there more than one log-book?

A. Yes, there is the mate's log-book, besides that.

Q. Which is the ship's log, the final entry?

A. That is the mate's log-book.

Q. Now, was a log kept of the weather conditions on February 18, 1916? A. Yes.

Q. Who kept it that day?

A. The third officer.

Q. What was his name? A. G. Grundy.

Q. Would you be able to identify those books if shown you? A. Yes.

Q. Which is the first book in which the entry is made on that date?

A. This is the official log-book.

Q. You have an official ship's log of that date, have you?

A. Yes, this is it right here; February 18, 1916; this is supposed to have been the original entry; the other is a scratch log kept in the pilot-house by the officer; that is the official writing up.

Q. Now, this mate's log-book is opened to the date February 18, 1916, is it? A. Yes.

Q. Whose handwriting are these entries in?

(Testimony of Charles Wall.)

A. Mr. Grundy's, the third officer.

Cross-examination.

Mr. CATHCART.—Q. You have no duties with reference to the bath-room, have you?

A. No, nothing, outside of inspections. [473]

Q. And the inspection; that is, going through the ship to see if there is anything out of order or wrong with the equipment? A. Yes.

Q. Did you make inspection February 18?

A. Yes.

Q. Do you remember it distinctly, or are you speaking because—

A. No, I remember it distinctly, because it is done every day.

Q. Do you remember it because it is done every day, or do you remember doing it particularly on that day?

A. Yes, I remember doing it particularly on that day.

Q. What time of day was it you made the inspection? A. Usually around eleven o'clock.

Q. On that day? A. Yes.

Q. Eleven o'clock that day? A. About eleven.

Q. What time did you get into the bath-room that day?

A. It might have been between eleven and twelve.

Q. Did you go into the bath-room? A. Yes.

Q. Into the shower-bath?

A. I took a look in there.

Q. Just opened the door and looked in?

A. Opened the door and looked in.

(Testimony of Charles Wall.)

Q. You have talked this matter over with the captain, I suppose, haven't you, about the case?

A. Yes, I may have at different times.

Q. Don't you remember to have done so?

A. Yes, I did.

Q. And compared notes with him with reference to how the bath-room was equipped, did you not?

A. I could not say that I did, no.

Q. Didn't you talk about the handle being there?

A. Not that I can recollect.

Q. You don't recall? A. No.

Q. Did anybody ever ask you about the handle being there on February 18, 1916? A. No.

Q. Did you ever tell anybody the handle was there on February [474] 18, 1916, before you heard of this case? A. No.

Q. Isn't it a matter of fact that that handle was put on subsequent to this accident? A. No.

Q. Not true? A. Subsequent, no.

Q. Afterwards?

A. No, it was not; it was there the day before the accident.

Q. Now, this slab, that you say would afford a support, if a person was holding on to it, he would have to extend his fingers on one side and his thumb on the other, would he not? A. Yes.

Q. He would have no place on the slab by which he could get a grip, could he? A. Not very well.

Q. If his foot should slip out under him and he should fall backward, his hand would slide right off that slab, would it not? A. It might.

(Testimony of Charles Wall.)

Q. Wouldn't it?

A. It might have done so, I could not say.

Q. Don't you know that it would? There was nothing that he could hold on, was there?

A. There is a curtain rod.

Q. I am speaking of the slab on the right-hand side as you go in; how could he hold on if he fell backwards?

A. I am sure I don't know; I think I could hold on.

Q. You think you could? A. Yes.

Q. The slab is smooth marble, isn't it?

A. Smooth marble.

Q. Now, if a person falling should catch hold of the hot water pipe it would scald and burn his hands, wouldn't it?

A. The hot water pipe is inside of the other two; they naturally would catch the cold water pipe first.

Q. Answer my question, Chief; if he did catch hold of the hot-water pipe it would scald his hands and burn them, would it not?

A. I imagine it would, yes.

Q. The three pipes are so placed that in reaching out one might [475] catch hold of any one of them?

A. In standing on the outside and stepping in, it is natural to catch the first pipe at hand instead of passing by the first two pipes and catching the inside one; you naturally catch the first one at hand.

Q. The three pipes are close up against the wall, are they not? A. Yes.

(Testimony of Charles Wall.)

Q. So that you could not get your hand in around one pipe?

A. Yes, there is space enough for that; there is space enough for that; there is space enough to get past, to get the hand around the pipe.

Q. In speaking of catching hold of the pipe, you are going on the theory that one catches hold of it in entering. Would you reach out and catch hold of it on entering the bath?

A. If a person lost his balance.

Q. Your idea is that if a person entering that bath, stepping into it, should lose his balance and fall over backwards, he could reach out and catch hold of the pipe? A. He could, yes.

Q. How far inside the bath are these pipes? What is the distance from the edge of the slab?

A. Probably about 12 to 15 inches; I don't think more than that—12 inches, most likely.

Q. Now, that knob—that is a door-knob that turns, is it not? A. Yes.

Q. If a person entering the bath should slip and fall backwards, in catching hold of the knob the knob would turn and the door open right on them?

A. No, not necessarily, unless he twisted the knob around; I don't see how it would open, just by catching hold of it.

Q. You don't think so, if a person were falling?

A. No, likely not. [476]

Q. Have you tried catching hold of this knob at all? A. I have, yes.

(Testimony of Charles Wall.)

Q. And falling backwards, to see if your grip would hold?

A. I have not tried to fall backwards; no necessity to try and fall backwards.

Q. In other words, when you speak about catching hold of this slab, you mean that a person could put his hand on it to steady himself as he entered into the bath? A. That is my idea, yes.

Q. And the same way you speak in reference to the door knob?

A. Yes; it might save a person losing his balance, by grabbing it.

Q. The door-knob? A. Yes.

Q. Providing it didn't turn when he did?

A. It might turn, I don't know; that is a possibility.

Q. That door opens inside into the bath-room, does it not?

A. Yes, it opens into the bath-room—I would not be sure about that; I think it does; I think it opens into the bath-room.

Q. You say that there are overhead lights there?

A. Lights in the ceiling, or light in the ceiling.

Q. It is one light, isn't it?

A. I am not sure whether there is more than one, or two; I am not sure about the number of lights.

Q. Electric light?

A. Yes, electric lights.

Q. What candle-power, do you know?

A. Well, maybe 40 or 60; I am not sure which.

(Testimony of Charles Wall.)

Q. You don't know how many there are?

A. I would not say offhand whether there was one or two there. [477]

Testimony of George Grundy, for Claimant.

GEORGE GRUNDY, called for claimant, sworn.

Mr. CAREY.—Q. Are you an officer of the steamship "Great Northern"? A. Yes.

Q. What officer? A. Third officer.

Q. How long have you been in that vessel?

A. July 1, 1915; previous to that I was fourth officer.

Q. State whether or not it was part of your duty as third officer to keep the log-book of that ship.

A. I wrote the log at the expiration of my watch, the rough log or bridge log; four hours in the morning and four hours in the evening; at the expiration of the day I take the log and copy it into the official log-book.

Q. This log-book which was produced here by Mr. Wall, the first officer, marked on the outside, "Log-book of the Great Northern on Voyage from December 6, 1915, to March 2, 1916," is opened at the page dated February 19, 1916. Will you state whether or not the entries on that page are in your handwriting?

A. Yes, they are.

Q. When did you make those entries?

A. On the same day, February 18.

Q. Now, how was observation taken of the weather conditions from which observation entries in the log-

(Testimony of George Grundy.)

book are made—how do you take the weather observations?

A. Well, we observe the weather as it is in our watch, any wind, direction of the wind, sea, any swell, rain.

Q. What part of the ship are you on during your watch? A. On the bridge.

Q. Now, on February 18, there are entries in the log-book under the column "Remarks." State whether or not those are in your [478] handwriting? A. Yes, that is my handwriting.

Q. What is the fact as to whether or not those are a correct record of the condition of the weather on the date named? Is this a true statement of the conditions on that date?

A. It is a true statement.

Mr. CAREY.—I wish to offer in evidence the entries in the log-book as of date February 18, 1916, and will ask consent of counsel representing the libellant to withdraw the original book and permit the reporter to make a copy of this page, the same to stand in lieu of the original, for the convenience of the ship and its officers?

Mr. CATHCART.—We have no objection to the reporter making a transcript of the page.

(The transcript of the page is marked Claimant's Exhibit No. 4.)

Mr. CAREY.—Q. I will ask the witness some questions in explanation. I will ask you to explain the figures in the column headed "Time by clock." What are those figures? What do they mean?

(Testimony of George Grundy.)

A. Those figures are the time by the watch, the change of the watch.

Q. The first one is "4"; is that four o'clock A. M.?

A. In the morning.

Q. The second one is 8; is that eight o'clock A. M.?

A. Yes.

Q. In the column headed "Time on course, hours, minutes" are certain figures. What do those figures represent?

A. They are the number of hours the ship ran on the course that particular watch.

Q. In the column headed "Remarks" are entries apparently relating to the weather. Are these the weather entries that you were speaking of a few moments ago in your testimony? A. Yes. [479]

Q. Now, how often are those entries made in the log-book? A. At the end of each watch.

Q. That would be every four hours.

A. Every four hours.

Q. What was the condition of the weather on that date, between four o'clock and eight o'clock A. M.?

A. Fine and clear weather; light breeze, smooth sea, heavy northwest swell.

Q. What was the condition of the weather between eight o'clock A. M. and 12 o'clock M.?

A. Fine weather, moderate breeze, small sea, moderate swell.

Cross-examination.

Mr. CATHCART.—Q. You are reading now from the exhibit? A. Yes.

Q. You were going from San Pedro to Hilo?

(Testimony of George Grundy.)

A. Yes.

Q. How many days out from San Pedro was the 18th of February, 1916?

A. I don't just remember offhand; it is in the book.

Q. Where did you get the figures and letters showing the pilot-house compass and the standard compass?

A. They are two different compasses; the course is set on the standard compass and the steering compass is compared with the standard compass.

Q. Who sets the course on the standard compass?

A. The officer on watch under the direction of the captain.

Q. Leaving San Pedro, you first make a northwesterly course, do you, and then swing more to the southerly? A. Yes.

Q. And at noon time you take the latitude and longitude entered here? A. Yes.

Q. I notice under the column headed "Wind," "S. W. 2, S. 4, S. W. 4, N. N. W. 3." What does that figure mean after the letters?

A. That is the force of the wind, from zero to 10.

Q. Per hour?

A. No; 10 is a hurricane; zero is calm.

Q. 10 is the maximum? A. Yes. [480]

Q. What do the letters "B. C." mean?

A. Clear weather.

Q. What does that come from?

A. That is a hydrographic term.

Q. The swell on that day was no heavier than it had been for previous days? A. No.

(Testimony of George Grundy.)

Q. No heavier? A. No heavier.

Q. The sea was about the same?

A. About the same, yes.

Q. It had not subsided at all?

A. It had not subsided.

Q. Just about the same swell from the time you got well out into the ocean until you reached Hilo?

A. Yes. [481]

Testimony of W. B. Lowenthal, for Claimant.

W. B. LOWENTHAL, called for the claimant, sworn.

Mr. CAREY.—Q. Where do you reside, Mr. Lowenthal?

A. In San Francisco.

Q. How long have you lived in this city?

A. 5 years.

Q. What is your business?

A. Grain and bean business.

Q. Were you a passenger on the voyage of the steamship "Great Northern" from San Francisco via San Pedro to Hilo and Honolulu, leaving San Francisco February 14, 1916?

A. February 14; yes.

Q. Do you remember what room you occupied at that time?

A. I think 323, if the 300's are on the "C" deck.

Q. Did you have occasion to use the public shower-bath on the "C" deck? A. Yes.

Q. How frequently? A. Every morning.

Q. Did you use it on February 18, 1916?

(Testimony of W. B. Lowenthal.)

A. Yes.

Q. State whether or not your wife traveled with you on that trip. A. She did.

Q. Did your wife use the shower? A. She did.

Q. How frequently?

A. I think every morning; she may have missed one morning, but of that I could not be certain.

Q. Did you experience any difficulty in using the shower, either on the 18th or any other day, on that voyage?

Mr. CATHCART.—Objected to as being leading and calling for the conclusion and opinion of the witness.

A. I had no difficulty.

Mr. CAREY.—Q. Will you please describe the shower-bath as you remember it, with particular consideration of what facilities, if any, existed at that time for taking hold and preventing slipping or falling down in making use of the bath?

A. To the best of my knowledge, there was no rod or brace to hold onto in the shower; there were just the three walls and the [482] curtain in front; that is the curtain rod.

Q. Let me attract your attention to the photographs in evidence here as Claimant's Exhibits Nos. 1, 2 and 3, in which are shown a handhold on the marble slab at the back of the bath. Have you any recollection as to whether that was there when you used it? A. I don't remember it.

Q. Please notice in these photographs along the right-hand side of the shower-bath what appears to

(Testimony of W. B. Lowenthal.)

be the edge of the marble slab; was that there at the time when you took your baths?

A. Yes, that was there.

Q. What would you say as to whether or not that afforded an opportunity for taking hold, if you so desired?

Mr. CATHCART.—Objected to as calling for the opinion and conclusion of the witness.

A. I think that would assist you in supporting yourself.

Mr. CAREY.—Q. Now, these pipes shown more to the left of the picture are the water-pipes, are they not? A. Yes.

Q. Were they there at the time you took your baths? A. They probably were.

Q. What would you say as to whether or not they afford an opportunity to take hold of if you so desire?

Mr. CATHCART.—The same objection as to the previous question.

A. I should not think they would be any advantage.

Mr. CAREY.—Q. I notice in Claimant's Exhibit No. 2 a door-knob at the left-hand side of the shower-bath. Do you remember that being there at the time? A. I do not.

Q. You have no recollection of that?

A. I have not.

Q. Now, what was the condition of the bath-room in which this shower was located, as to whether or not it was lighted up or dark? [483]

A. It was lighted up.

(Testimony of W. B. Lowenthal.)

Q. What degree of light was there at that time, as to whether or not it would be practicable to see the condition of the bath?

Mr. CATHCART.—Objected to as calling for the opinion of the witness, the latter part of the question

A. I always found sufficient light for all purposes.

Mr. CAREY.—Q. You referred to a rod on which the curtain runs at the top or front of the bath; will you describe that rod a little more fully?

A. That was a rod on which the curtain hooks, sliding back and forth; so it was possible to pull the curtain across the front of the shower.

Q. Is that the rod shown at the top of this picture?

A. Yes.

Q. About what diameter of rod, if you can tell?

A. I don't remember; I should say about an inch in diameter.

Q. Do you remember whether you had occasion to hold onto this pipe or rod? A. I did.

Q. Do you know Mr. C. J. Hutchins, the libellant in this proceeding? A. I do not.

Q. Have you ever seen him? A. Yes.

Q. Where did you see him?

A. On the steamer, and at Honolulu.

Q. Do you remember a mock trial that was carried on on the night of February 18, in the lounge-room of the ship where the passengers were assembled?

A. I did not attend.

Q. You were not present in the shower-bath room at the time Mr. Hutchins claims he had this accident?

A. I was not.

(Testimony of W. B. Lowenthal.)

Q. Did he say anything to you about the accident?

A. He did not.

Q. What would you say generally now as to whether or not this shower-bath appeared to be safe or dangerous? [484]

Mr. CATHCART.—Objected to as leading and calling for the opinion and conclusion of the witness.

Mr. CAREY.—I withdraw the question.

Cross-examination.

Mr. CATHCART.—Q. This slab of which you speak was the slab that formed one side of the shower, was it not? A. Yes.

Q. And one could only lay his hand along the slab with fingers on one side and thumb on the other; there was no way of getting a grip on the slab, was there? A. No.

Q. So that if a person having his hand on that slab, with his fingers on one side and thumb on the other should slip and fall backwards, his hand would just slide off the smooth marble, would it not?

A. I did not stand that way any time that I held on to the slab, I faced out and held on with my hand this way (illustrating).

Q. But if a person facing in and entering the bath should have his hand laid along this slab, as I stated, then if he fell back he would slip off the smooth surface of the slab? A. It would be possible.

Q. Wouldn't it be the natural and only way that could happen, because he had no grip there to hold on to? A. I should think so; yes.

Q. Suppose I am hanging on to the table like this

(Testimony of W. B. Lowenthal.)

and my full weight is thrown back, I would have to have a very powerful grip in my hand to hold my weight, would I not? A. Yes.

Q. Did I understand you to say that you held on to the pipes? A. The rod, the curtain rod.

Q. When you were in the shower?

A. Yes. [485]

Q. You did not hold on to the pipes at all?

A. No.

Q. And there was no hand-grab or hold at the rear of the bath-room that you saw?

A. Not that I saw; not to the best of my recollection now.

Q. There was none; you did not hold on to that at all? A. I did not.

Redirect Examination.

Mr. CAREY.—Q. In taking your bath did you face outward toward the entrance of the bath?

A. I did.

Q. Then your back would be to the marble slab on which this hand-grab is shown in the picture?

A. Yes.

Recross-examination.

Mr. CATHCART.—Q. You did not back into the bath, though, did you?

A. I don't think so; I don't remember.

Q. While in the bath you worked the handle on the pipe to turn on the water, didn't you?

A. Yes, I presume so; I do not usually turn on the shower before I get in.

Q. So that you would have an opportunity of ob-

(Testimony of W. B. Lowenthal.)

serving all of the interior fittings of this shower-bath, would you not? A. I should think so.

Q. You took a bath every morning?

A. Every morning.

Q. Did you come back on the steamer?

A. I did not.

Q. When did you return?

A. On the "Manoa," three days later. [486]

Testimony of C. S. Mills, for Claimant.

C. S. MILLS, called for the claimant, sworn.

Mr. CAREY.—Q. Mr. Mills, where do you live?

A. San Francisco.

Q. Are you one of the officers of the Great Northern Steamship Company? A. Chief steward.

Q. How long have you held that position?

A. Since August 10, 1915.

Q. Will you state whether or not as chief steward you have general supervision and direction of the baths on board that ship and particularly the shower-baths?

A. Everything pertaining to the catering and room department, staterooms, baths, toilets.

Q. What opportunity have you had to know the condition of the shower-baths on the C deck?

A. Well, I have every opportunity by making an inspection of every shower and toilet, as many as sometimes five or six times a day at sea, and also the inspection with Captain Ahman at 11 o'clock when I go to the bridge and we make a tour of the

(Testimony of C. S. Mills.)

ship, entering all staterooms, unoccupied and showers, baths and toilets.

Q. Will you state whether or not that inspection was carried on from day to day during this voyage that left San Francisco February 14, 1916, and ran over to the Islands?

A. Carried on every day except Sunday and entering port.

Q. Have you any particular remembrance of the dated February 18, 1916? A. No.

Q. Did you know the libellant, Mr. Hutchins?

A. Well, not personally; I just know him the same as I know any other passenger.

Q. You saw him on board on that voyage?

A. I saw him on board. [487]

Q. Did you hear him make any complaint about having had an accident in the C shower-bath?

A. I had no information about it at all; Doctor McAdoy informed me.

Q. Who was Dr. McAdoy?

A. The ship's surgeon.

Q. About what time did he inform you?

A. I have no recollection.

Q. That is to say, whether it was the same day that the accident happened or some other day?

A. I have no recollection.

Q. You say you go in and out of these shower-baths on the ship daily 5 or 6 times? A. Yes.

Q. Now, I call your attention to these photographs, Claimant's Exhibits 1, 2 and 3, and will ask you to examine them and to state whether or not those are

(Testimony of C. S. Mills.)

correct representations of the shower-bath in question as it was on February 18, 1916. A. Yes.

Q. For the purpose of this record will you please describe the bath-room in which this shower is contained, describe the shower, describe the lighting system, describe the facilities afforded, if any, for passengers making use of the baths?

A. Well, the baths are located about amidships on the C deck, with entrance on either passenger alleyway starboard and port side; the two baths are about the center on the after part of the room, and to go into the baths you face the door of the heater-room, and to go in to take the shower you would have to face the back of the shower-bath, and step over a slight ledge maybe about 4 or 5 inches high to the receptacle; at the after end, which is the left-hand side entering on the port side, the pipes from which you control the flow of the water are situated and on the shower to the left the pipes are on the right-hand side of you, and an open slab is *vice versa* [488] it is on the left on one shower and right on the other. Back of the bath there is a hand-grab and a curtain rod with a curtain which runs on rings, to keep the water inside the bath. The lighting, I am not sure whether there are three or one lights, but we use 60-candle power globes in there and there is always lots of light; the marble slab does not reach to the top of the deck, and the light flows right over in each room.

Q. In entering the bath on the port side what facilities would a passenger have to take hold of?

A. He would have the slab to the right of him and

(Testimony of C. S. Mills.)

the curtain on the left of him. I see in the picture the curtain is shown to the right, but it is nearly always hanging on this side because when a person gets out he will pull the curtain away from him to step out of the bath; when we have it ready for inspection the curtain is always by the three pipes, so that when you get in there you could grab the curtain, which would be ample in my idea to save anybody from slipping. Then you have the marble side; there are three marble slabs, and you have the marble slab to the right of you, if you are entering the port side one, and the marble to the left of you if you are entering the starboard side there, so that it gives a curtain and a marble slab and then also at the back of the bath they have got the grab-rail.

Q. The latter is something in the nature of a metal handle bolted to the wall?

A. I don't know what kind of metal it is; I think it is called Potosi metal, which they use to take the place of silver, some kind of white metal, I don't know just what it is; I am not a mechanic in regard to metal.

Q. As shown on those photographs there is a series of three [489] pipes at the left of the shower-baths; what would you say as to whether or not those are so located as to afford an opportunity to take hold of?

Mr. CATHCART.—The same objection as heretofore, calling for the opinion and conclusion of the witness.

A. A man could take hold of them; if I was falling

(Testimony of C. S. Mills.)

I would grab for the nearest thing in reach.

Mr. CAREY.—Q. Is there any rubber mat provided in those baths? A. No.

Q. Why not?

Mr. CATHCART.—I object to that upon the ground no foundation has been laid.

A. I did not think it was correct to have a mat in the bath-room.

Q. Why?

Mr. CATHCART.—The same objection.

A. Not sanitary.

Mr. CAREY.—Q. If any accident should happen in the use of the shower-baths on the ship to whose attention would that be called in the natural course of business on the ship?

A. The purser and myself; if it happened inside of the staterooms or showers or baths or on deck it would be reported to the deck department, the chief officer or the captain.

Q. Have any complaints been made to you about these shower-baths? A. No.

Q. Have you traveled on other ships than the "Great Northern"? A. Yes.

Q. How much experience have you had at sea?

A. 12 or 13 years. [490]

Cross-examination.

Mr. CATHCART.—Q. On the Pacific Ocean?

A. On the Pacific most of the time, yes.

Q. You are an American? A. No, English.

Q. Was the question of mats ever discussed by you with anybody before this accident? A. No.

(Testimony of C. S. Mills.)

Q. Never brought up in any way, was it?

A. No.

Q. This curtain that you speak of hanging there, the purpose of that is to keep the water from splashing out, isn't it? A. Yes.

Q. And the purpose of the pipes that are there is to afford a supply of water to the baths, is it not?

A. Yes.

Q. And neither the curtain nor the pipes are put there for the purpose of affording a hand-grab or anything like that, are they?

A. They are regular ship's equipment appertaining to the shower-bath but could be used for that purpose.

Q. If anybody slipped they would catch hold of anything, wouldn't they?

A. Catch hold of anything.

Q. And if they caught hold of that curtain and it ran along the pole, they would run along with it?

A. Yes, but he would not slip and break his neck though.

Q. He might, might he not? A. Yes.

Q. If he caught hold of that hot steam-pipe he would burn his hands pretty badly, wouldn't he?

A. He would not hold it long.

Q. He would not hold it long?

A. No. He might get a blister.

Q. That would not afford him any help at all then, if he was falling?

A. If he caught hold of the hot one it would not,
[491] but there are two others there; a man would

(Testimony of C. S. Mills.)

not be necessarily apt to grab the hot one.

Q. The only provision for holding there is that handhold or grab on the rear slab, isn't it?

A. Outside of the equipment, yes.

Q. What equipment is there around there for the purpose of supporting anybody or for the purpose of holding on there? A. The grab-rail.

Q. That is the only thing that is there for the purpose of support? A. The grab-rail?

Q. Did you say anything about holding on to this marble slab?

A. Yes. A man, if the ship was in motion, was rolling a little, would naturally steady himself on that slab or the curtain.

Q. But it would not afford any grab that a man could hold on to if he fell back?

A. It would not afford a grab; it would afford enough protection that a man would not lose his footing, by using those precautions, holding on to something.

Q. That is your opinion? A. Yes.

Q. You have talked this matter over I suppose with the other officers on the ship, haven't you?

A. Yes.

Q. When did you first speak about the hand-grab or hold?

A. I think after the first trip we made to Honolulu in November.

Q. You spoke about it? A. Yes.

Q. To whom?

A. I don't know how the conversation come up

(Testimony of C. S. Mills.)

but we were talking about putting them on, and we put them on.

Q. With whom were you talking?

A. Mr. Blair and also Mr. Wiley and maybe somebody else was there; I don't know.

Q. Who is Mr. Blair?

A. Mr. Blair is our Port Steward.

Q. Here in San Francisco?

A. In Portland, Oregon. [492]

Q. Who is the other gentleman, you say?

A. Mr. Wiley.

Q. What is he? A. Marine Superintendent.

Q. At Portland? A. San Francisco.

Q. So that this hand-grab was put on in November of 1915?

A. No. I don't know when it was put on. It was put on sometime after the first trip. I think it was in January, if I remember right.

Q. But you are not sure?

A. No; we got back around about Christmas time or New Year's, and it was put on somewhere around there.

Q. It was not on then when the ship came from Cramp's Yards to the Pacific? A. No.

Redirect Examination.

Mr. CAREY.—Q. How frequently are shower-baths used on the ship?

Mr. CATHCART.—I object to this as not being redirect examination.

A. Well, it is according to the weather conditions and climate; on the coast we don't have but very

(Testimony of C. S. Mills.)

little use for them, maybe half a dozen or a dozen times during the trip, but on the Honolulu run they are kept going from 5:30 or 6 o'clock in the morning up till 9 o'clock, a constant stream.

Q. How many shower-baths are taken daily on the Honolulu trip? A. I have no record of how many.

Q. Can you give approximately the number?

A. Approximately I should judge 30 or 40 on each deck; maybe 50.

Recross-examination.

Mr. SMITH.—Q. When did you say these hand-grabs were put on?

A. I believe in January.

Q. What year? A. This year. [493]

Mr. CATHCART.—Q. Where were they put on?

A. Put on in San Francisco.

Q. Do you know by whom?

A. By Muir & Symon. I O. K.'d the requisition and the bill and I think it has all been paid for.

Mr. SMITH.—Q. Have you that bill?

A. I believe I have a copy of it. I keep in my records all those things.

Mr. CATHCART.—Q. The handle is white?

A. White metal.

Q. It is not bronze or brass?

A. It is a white metal, as far as I know. [494]

Testimony of W. J. Tomlin, for Claimant.

W. J. TOMLIN, called for the claimant, sworn.

Mr. CAREY.—Q. Will you please state your full name? A. William John Tomlin.

(Testimony of W. J. Tomlin.)

Q. Where do you live?

A. 1140 Regent Street, Alameda.

Q. What is your business? A. Shipfitter.

Q. What firm are you connected with?

A. Muir & Symon.

Q. What is their business?

A. Shipfitting, ship repairing, machine work.

Q. Did you put some handles or hand-grabs in the shower-baths on board the "Great Northern" for that steamship company? A. I did.

Q. Please look at the photographs Claimant's Exhibits 1, 2 and 3, and state whether or not you put on the handles that are shown on the marble slab at the back of the bath? A. Yes, I put them on.

Q. What time did you put those on?

A. Around January; my time-cards will tell that.

Q. January, 1916? A. Yes.

Q. Can you give the exact date?

Mr. CATHCART.—We object to the witness being shown any papers in the matter.

Mr. CAREY.—Q. By referring to your time sheet can you tell the exact date? A. Yes.

Q. What is the paper you hold in your hand?

A. That is the time-card—two time-cards.

Q. When were those time-cards made?

A. They were made the evening of the finishing of the day's work, and turned into the office, the material used, to be charged up.

Q. In whose handwriting are the entries on these time-cards? A. Mine. [495]

Q. What are the dates of these time-cards?

(Testimony of W. J. Tomlin.)

A. The 24th and 25th of January.

Q. 1916? A. Yes.

Q. And the signature of W. J. Tomlin on these time-cards, is that your signature? A. Yes.

Q. Now, just how did you make up these time-cards and for what purpose?

A. At the end of the day you make up your time, the time occupied on the different jobs, whether aboard boat or ashore, so that they can charge up in the office the time and material on that job.

Q. You make them for your employer?

A. Yes.

Q. Your employer is Muir & Symon, I believe you said? A. Yes.

Q. You turn them in at the close of each day?

A. At the close of each day. If you lose the time-card you lose that day's work.

Q. Just what is the object of making the time-card, the entries on the time-card?

A. To charge the different material on each job you may be working on and the number of hours.

Q. Now, by referring to these time-cards can you state the exact date when you put these handles on the back of the showers on the "Great Northern"?

A. Yes.

Q. On what date?

A. The 24th and 25th of January, 1916.

Q. You are positive about that date, are you?

A. Yes.

Mr. CAREY.—I will offer in evidence the two time-cards testified to by the witness and ask that

(Testimony of W. J. Tomlin.)

they be marked as exhibits.

(The time-cards were marked Claimant's Exhibits 5 and 6.)

Cross-examination.

Mr. CATHCART.—Q. Where did you get these time-cards? [496]

A. This gentleman got them at the office (pointing to Mr. Relf).

Q. You have not seen them since that date, have you?

A. No; we never see them after we turn them in.

Q. Have you any recollection of doing this work?

A. Oh, yes. I think I done it on both ships; I know I did it on the "Great Northern."

Q. On the "Northern Pacific" too?

A. I am pretty sure I done them all on the "Northern Pacific"; I done them all on the "Great Northern," I am sure.

Q. How many?

A. I could not tell you exactly the number of the handles I put on the showers; I don't know whether it is mentioned on there; I think it is just putting on the handles on all the showers; I know they were put on.

Q. This is written by you, all of it? A. Yes.

Q. And all on the evening of the day that you got through?

A. There are two separate days work there; at the close of each day you make them out and turn them in to the office.

Q. All written out at that time? A. Yes.

(Testimony of W. J. Tomlin.)

Q. The letters on there "G N SS" mean what?

A. "Great Northern Steamship."

Q. And "N P SS"?

A. "Northern Pacific Steamship."

Q. On Exhibit 5 there is "Drilling marble in shower-baths, using electric drill 4 hours." That is "Northern Pacific Steamship," isn't it?

A. Yes, that is Northern Pacific Steamship Company, but is "Great Northern."

Q. Why have you got "N P SS," which would be the "Northern Pacific Steamship," down below?

A. I don't know why that was put there; there must be an error in putting down the name of the ship; that is all.

Q. According to your record there, you drilled the holes on [497] the "Northern Pacific Steamship," didn't you? A. On the "Great Northern."

Q. According to your record you drilled these holes in the marble on the "Northern Pacific Steamship," didn't you? A. According to that, yes.

Q. That is your record?

A. What is the other one?

Q. You put a baker's oven in the "Northern Pacific"? A. Yes, and rebricked the baker's oven.

Q. On January 24, 1916, the same day that you drilled the marble in the shower-baths?

A. That is the "Great Northern." Steering-gear, "Great Northern." All "Great Northern" work excepting that there; that is an error.

Q. Didn't you put the handles on the "Northern Pacific" steamship, these grab-handles?

(Testimony of W. J. Tomlin.)

A. Yes, I put some on, but not at this date.

Q. How do you know?

A. Because there must have been about a month elapsed.

Q. Were not the handles put on the "Great Northern" later than they were put on the "Northern Pacific"?

A. No, the "Great Northern" had them on first, because she was going to Honolulu.

Q. Have you got your cards for that?

A. Cards for the "Northern Pacific"?

Q. Yes.

A. I have not got them; they would be in the office probably; in all probability they would be in the office.

Q. Did you put that baker's oven on the "Great Northern"?

A. That is the "Northern Pacific."

Q. That is a mistake too, is it?

A. I do not believe both these ships were here on one day, the same day.

Q. According to your record you put a baker's oven on the [498] "Northern Pacific" that same day, didn't you?

A. Yes.

Q. And that is a mistake too, is it?

A. No, I would not say that is a mistake. The contract number, 86, for putting in these ovens is on both. I left this out, in all probability here. That is not my writing there.

Q. Then "N P SS" is not your handwriting?

A. "Northern Pacific," no.

Q. Is "G N SS" your writing on exhibit 5?

(Testimony of W. J. Tomlin.)

A. Not this.

Q. You did not put that down at all?

A. No; they added that on.

Q. That is not your handwriting? A. No.

Q. When you said it was all in your handwriting you made a mistake?

A. I did not look at these two small things; they check them, after checking them they made a mistake there. You see the contract numbers are both the same. The handles in the shower-baths, contract No. 86. That would be a day later than this, would it not?

Q. This is the 25th?

A. We were just finishing them up.

Q. You don't remember the contract number, do you?

A. No, but we have to put down our contract number on there; there is a contract number written there, both the same number.

Q. Do you know what the contract number was?

A. 86.

Q. Do you remember it?

A. No, I do not remember it, but it is in my handwriting there; I am positive the number is right; they would be both the same contract number; if they were different ships they would be different numbers.

Q. I see you have contract No. 84, on January 25, being exhibit 6?

A. That is a different department, different work, is it not?

Q. Different contract?

(Testimony of W. J. Tomlin.)

A. Yes, probably a different department of the ship. [499]

Q. And 85 "Fastening Life Preservers"?

A. That would be another contract; that is deck department; one would be the steward's department.

Q. 86 is "Washers in ice-box, doors, butcher-shop"?

A. That would be another contract number probably—no, that would be the steward's department; that might be 86 too, being the steward's department.

Q. You have no independent recollection of the date on which you did this work on the "Great Northern" except as you gather it from here?

A. That is all; I know it was around that time; I could not give you the date exactly.

Q. By "here" I mean this time-card?

A. The time-card that was turned in that evening, yes.

Redirect Examination.

Mr. CAREY.—Q. The name of the steamship company is the "Great Northern Pacific Steamship Company," is it not?

A. Great Northern Pacific Steamship Company.

Q. Now, this entry on the time-card, exhibit No. 6, under date January 25, 1916, "No. 86, one hour, handles in shower-baths"—

A. —I was just finishing the job.

Q. Is that the date when you finished the job?

A. That is the day when I was finishing the job; that is the last hour.

Q. Are these the handles shown on these photo-

(Testimony of W. J. Tomlin.)

graphs exhibits 1, 2 and 3? A. Yes.

Q. I wish you would just tell how you fastened them on the shower-bath?

A. Back of this marble there is wood, $1\frac{1}{4}$ inch sheathing, the next partition there of the bath; we drilled through the marble and put long screws clean through the marble into the wood on the other side.

[500]

Q. How many screws on each handle?

A. Four on each handle.

Mr. CATHCART.—I object to this as not being redirect examination.

Mr. CAREY.—Q. What is the material of which this handle is made?

A. I believe it is brass-plated.

Q. Plated with silver?

A. Yes, silver-plated.

Q. What size are these handles?

A. The handles, that is over all, lugs and everything, inside of the handle is about 6 inches; about 9 inches over all, approximately 9 inches and 6 inches in the center of the grasp.

Q. How thick is the metal of the grasp?

A. About an inch and a quarter.

Mr. CATHCART.—The same objection to all this line of testimony.

A. —about an inch and a quarter wide by $\frac{3}{8}$ of an inch thick, as near as I can give you offhand.

Mr. CAREY.—Q. How firmly are these handles attached? A. Right tight, tight up.

Q. With reference to the date, you said something

(Testimony of W. J. Tomlin.)

about this being before the "Great Northern" steamship went on the Honolulu run?

A. One of the runs; I would not say for sure it was the first run, but I know they were put on before they were put on the "Northern Pacific," because they were done when the boat was running to Honolulu; the other was put in afterwards.

Q. Under whose direction did you put those on?

A. Mr. Switzer, our outside foreman.

Q. The outside foreman of your firm?

A. Yes. [501]

Recross-examination.

Mr. CATHCART.—Q. Did I understand you to say they were put on the "Great Northern" on the first run to Honolulu?

A. No; I say they were put on the "Great Northern" first, before they were put on the "Northern Pacific."

Q. How do you know that?

A. Because I know I put them on before she went to Honolulu, and put on the others probably a month after.

Q. That is, you put them on the "Great Northern" before she went down to Honolulu?

A. Yes, on one trip; I would not say the first or second trip, I don't know the dates of the sailing, but I know they were not on the first trip, I am pretty sure they were not on the first trip she went out.

Q. Do you know when her first trip was?

A. No.

Q. Do you know when her second trip was?

(Testimony of W. J. Tomlin.)

A. No.

Q. Do you know when her third trip was?

A. No, not in regard to the date.

Q. So that you really don't know what trips she did make before you put on the handles?

A. *Ho.* I should judge one trip; I think about that, but I couldn't say for sure.

Q. Why do you judge so?

A. Well, because I put them on when she came back from Honolulu on one trip; she must have made one trip previous to that.

Q. Did not make two trips previous to that?

A. I would not say for sure, because I have no basis for that.

Q. You did not keep track of the trips of the "Great Northern" to Honolulu, did you? A. No.

Q. Now, you don't know that that handle that you say is located there in the photographs is the handle in the "Northern Pacific" steamship's bath, do you?

A. I don't know whether this is in the "Great Northern" or "Northern Pacific" as they [502] appear here; you can't tell.

Q. You don't know?

A. No; both baths are identical, the same in that regard; the handles are in the same position and the shower-baths look alike, similar in both baths.

Q. You worked five hours putting on handles, drilling the holes and everything?

A. Whatever the time is here, 5½ hours.

(Testimony of W. J. Tomlin.)

Q. 5½ hours altogether? A. Yes.

Q. Drilling holes and putting the handles on?

A. Yes. [503]

Testimony of J. B. Switzer, for Claimant.

J. B. SWITZER, called for the claimant, sworn.

Mr. CAREY.—Q. Where do you reside?

A. 823 Alvarado Street, San Francisco.

Q. What is your business?

A. Shipfitter; foreman at the present time for Muir & Symon.

Q. What is the business of Muir & Symon?

A. Ship repairing and overhauling and so forth.

Q. Were you outside foreman of that firm in January, 1916? A. Yes.

Q. Do you remember anything about installing in the shower-baths of the "Great Northern" the grab-handles that are fastened to the slabs at the back wall of these baths?

A. Yes; I received a requisition from Mr. Muir; he made duplicates of it and handed me one of the duplicates, and I went down to the boat and saw what was wanted, and ordered the handles made at the foundry, and instructed Mr. Tomlin to drill the holes and have everything ready, so when the handles came they were ready to be put on, at the place.

Q. Can you give us the date when they were installed on that ship?

A. I could not exactly give you the date any more than January, outside of what these time-cards show.

Q. You are sure it was in January, 1916?

(Testimony of J. B. Switzer.)

A. Yes.

Q. Why are you sure of that?

A. Well, on account of the dates of the time-cards and the dates of the requisitions.

Q. Will you describe these handles. You had them made, I think you said, at the brass foundry?

A. I had them made at the brass foundry from a pattern, about 9 inches long and about $1\frac{1}{2}$ inches away from the wall, about 6 inches of grab. [504]

Q. How wide was the metal at the grab?

A. The thickness of the metal is about $\frac{3}{8}$ of an inch; it is not exactly flat, it is oval-shaped, so that it could be easily grabbed by the hand.

Q. About $\frac{3}{8}$ of an inch thick and about how wide?

A. About an inch and a quarter.

Q. How are they fastened to the wall?

A. A hole was bored through the marble slabs, and it was screwed into the T. & G. back of the slab.

Q. Are you able to say positively that these handles were so installed prior to February 18, 1916?

A. Yes.

Q. Are you the Mr. Switzer that was referred to by Mr. Tomlin the witness who just left the witness-stand? A. Yes.

Q. Did you superintend his work? A. Yes.

Q. What are the nature of your duties with Muir & Symon?

A. When I receive the application, it is my duty to see that the work is ready to put up and to get the work under way; also it is my duty to go over the

(Testimony of J. B. Switzer.)

work after it is finished and see that it is done properly.

Cross-examination.

Mr. CATHCART.—Q. You were foreman, were you, all this year for Muir & Symon? A. Yes.

Q. Has your attention been called to these handles lately? A. No.

Q. When did you first hear anything about these handles—after being put on?

A. After they were put on?

Q. Yes. A. About three months ago.

Q. You talked it over with somebody? A. Yes.

Q. Whom?

A. This gentleman here (pointing to Mr. Relf).

[505]

Q. Have you any independent recollection of the matter at all as to the time? A. No.

Q. You go merely by these time-cards?

A. By the time-cards.

Q. And rely on that for the date? A. Yes.

Q. As to whatever you have said with reference to the time when it was put on? A. Yes.

Q. You have not that requisition that you speak of?

A. The requisition must be in the office—no, I think the requisition was turned back with the bill.

Q. You have not seen the requisition at all?

A. I did not see the requisition; I only have a duplicate of the requisition.

Q. You have not seen that duplicate since you did the work? A. No, I have not.

(Testimony of J. B. Switzer.)

Q. So you do not fix any date by the duplicate at all? A. No, there is no date on the duplicate.

Q. When you say that the work was done in January you say it because of the time-card here?

A. The time-card.

Q. You had a requisition for the same work on the "Northern Pacific," did you not? A. Yes.

Q. Did the same work on that?

A. Did the same work on that.

Q. Put in handles?

A. On the "Northern Pacific," yes.

Q. You ordered the handles from the brass foundry? A. Yes.

Q. What brass foundry?

A. W. T. Garratt.

Q. Have you any recollection of the time that you ordered those handles made? A. No.

Q. Have you any recollection as to the time it took for them to make the handles?

A. About a day to make them, or two days; I guess it must have been three days before I got them back, from [506] the time I ordered them, between getting them made and nickle-plated.

Q. Have you any independent recollection as to the time, or are you just speaking from your knowledge of the time that it usually takes?

A. My knowledge of the time it usually takes.

Q. You have no independent recollection?

A. No.

Q. Where was the "Great Northern" lying when these handles were put on? A. I believe Pier 25.

(Testimony of J. B. Switzer.)

Q. Have you any independent recollection of its lying there when you put the handles on or are you just speaking from the fact that it generally lies at Pier 25?

A. No, it did not generally lie at 25; at that time it was lying at Pier 25.

Q. So you do remember it was lying there?

A. Yes.

Q. Where was the "Northern Pacific" lying?

A. Pier 11 or 9; I could not say which.

(An adjournment was here taken until Monday, August 7, 1916, at 10 A. M.)

August 7th, 1916.

(An adjournment was here taken until 2 P. M. of the same day.) [507]

Monday, August 7, 1916.

Testimony of Katie Schnieder, for Claimant.

KATIE SCHNIEDER, called for the claimant, sworn.

Mr. CAREY.—Q. What is your place of residence?

A. 1183 Broadway, Alameda.

Q. What is your business? A. Bookkeeper.

Q. For what firm?

A. Muir & Symon, Incorporated.

Q. Were you bookkeeper for that firm during January, 1916? A. Yes.

Q. Did you make some entries in regard to repairs on the "Great Northern" about that time?

A. Yes.

(Testimony of Katie Schnieder.)

Q. Can you state from reference to the original entries made by you the date when the handles were put on the shower-baths on the "Great Northern"?

A. Yes.

Q. What date was it?

A. January 24 and January 25.

Q. 1916? A. Yes.

Q. Look at the sheets I hand you and state in whose handwriting they are?

A. In my handwriting, all of it.

Q. What are those three sheets?

A. They are the work on the steamer "Great Northern."

Q. Does it show there the date when the work was done? A. Yes.

Q. What else does it show?

A. All the other repairs according to the requisitions.

Q. From what source did you get that?

A. From the time-cards handed in.

Q. I call your attention to Claimant's Exhibits 5 and 6 being the time-cards, and will ask you whether those are the time-cards referred to in your last answer? A. Yes, sir.

Q. Please indicate on those sheets which have just been shown [508] you where the entries are made thereon relating to the drilling of the marble and setting of the handles in the shower-baths on the "Great Northern"?

A. On that and on the 25th and this on the 24th.

Q. Did your firm give this particular job on the

(Testimony of Katie Schnieder.)

steamship a number? A. Yes.

Q. What number was it? A. 86.

Q. Do these sheets show the number 86?

A. Yes.

Q. Is that the number at the top right-hand corner? A. Yes.

Q. Now, will you please put a check-mark at the side of these items on January 24 and January 25, that relate to these handles? A. Yes.

Q. Now, for what purposes were these sheets made up in your business?

A. In order to make up the bills from.

Q. State what the practice is in your firm of keeping the accounts.

A. First we have the requisition from the company and we enter it in the order-book and give it an order number; then the order number is given to the foreman; also three copies of the requisition are taken and one is given to the foreman and one for our use, and the other kept on a special file for reference; the foreman gives the number to the men on the job and they put the number on the time-card and we check from that.

Q. So that your accounts, if I understand you, are made up on sheets in your writing such as are in evidence here, from the time-cards? A. Yes.

Q. Then you had other time-cards besides these exhibits 5 and 6, to make up this particular account, did you? [509] A. Yes, sir.

Q. On exhibit 5, being a time-card, there appears opposite the item 86 the letters "G N SS" and

(Testimony of Katie Schnieder.)

“N P SS.” In whose handwriting are those?

A. W. J. Tomlin.

Q. In posting these items to what job did you charge them? A. Job 86.

Q. On which steamship?

A. On the steamship “Great Northern.”

Q. Will you state why the second item marked “N P SS” was not charged to “Northern Pacific” steamship?

A. Because the work was done on the “Great Northern”; that is a mistake.

Q. It should be— A. “G. N.”

Q. It should be “G. N.” instead of “N. P.”?

A. Yes.

Q. How do you know that?

A. Because at that time that was the only time we were doing such a job, and it could not be charged to any other number.

Q. That was No. 86? A. Yes.

Q. Which was the “Great Northern” job?

A. Yes.

Q. In your previous answer you referred to a requisition that is supposed to be made up when you get the order to do the work? A. Yes.

Q. I show you a typewritten sheet marked at the top “No. 86, ‘Great Northern’ Steamship”? Is that the requisition for this job? A. Yes.

Q. Among other items appears the item “Grab-bars in all shower-baths”: will you state whether or not that item relates to the matter in this account regarding these handles? A. Yes, it does. [510]

(Testimony of Katie Schnieder.)

Mr. CAREY.—I will offer in evidence the three sheets identified by the witness and testified by her to be in her handwriting.

(The sheets are marked Claimant's Exhibits 7.)

I also offer in evidence the typewritten requisition identified by the witness.

(The typewritten requisition is marked Claimant's Exhibit 8.)

Cross-examination.

Mr. SMITH.—Q. Do you know when you made this copy of Claimant's Exhibit 8?

A. Yes, January 20, 1916.

Q. How do you know that you made it on the 20th?

A. That is the date it was issued.

Q. There is nothing on it to indicate that, is there?

A. No, but that is the time the job was done.

Q. You are testifying now from memory or from your books? A. Partly from memory.

Q. Did you look it up just before coming here, look at your books to get the date?

A. Well, not for that purpose; we looked it up the other day when I got the records out.

Q. What did you say the date was?

A. January 20, 1916.

Q. That was the date the requisition came into your hands? A. Yes.

Q. What was done with the original requisition?

A. It is turned back to the office with the bill.

Q. When did you make this Claimant's Exhibit No. 7—when did you write in these items?

A. Generally the day after the time-card is turned

(Testimony of Katie Schnieder.)

in; the day after the job is done; they are posted the day after.

Q. Is this what you call posting?

A. Yes, from the time-cards.

Q. So that this exhibit No. 7 you would say was written by you when?

A. The day after the time-cards were turned in.
[511]

Q. Then this item concerning drilling marble in shower-baths using one electric drill four hours, and dated January 24, 1916, you would say that that item was placed by you on this Claimant's Exhibit No. 7 on January 25, approximately? A. Yes.

Q. You have not made any entries on this paper since that time? A. No.

Q. Do you have any personal recollection aside from your books and from these notes of the doing of that work on the "Great Northern" in January of this year? A. Yes.

Q. Aside from your books and your records you are confident that it was done at that time?

A. Yes.

Q. You are familiar with the handwriting of Mr. Tomlin, are you? A. Yes.

Q. Are you certain that those items on Claimant's Exhibit No. 5, "G N SS" are in his handwriting?

A. Yes.

Q. Also "N P SS"? A. Yes.

Q. If he testified that those were not his handwriting, do you think that he was mistaken?

A. Yes, absolutely.

(Testimony of Katie Schnieder.)

Q. Do you remember when the bill for these matters was sent to the Northern Pacific Steamship Company? A. The exact date?

Q. Yes, for the work done on order No. 86.

A. I think about two or three weeks later; the exact date I could not say.

Q. You do not know personally, I suppose, as to the fact that the steamship was in port at that time, do you—that is, you did not see it? A. No. [512]

Testimony of Sam B. Stoy, for Claimant.

SAM B. STOY, called for the claimant, sworn.

Mr. CAREY.—Q. Mr. Stoy, where do you reside and what is your business?

A. 2305 Scott Street, San Francisco. Manager of the London & Lancashire Fire Insurance Company, London & Lancashire Indemnity Company.

Q. Will you state whether or not you were a passenger on the "Great Northern" steamship on its trip from San Francisco to the Hawaiian Islands and return in February, 1916? A. I was.

Q. Do you recollect what room you occupied or what deck you were on? A. The C deck.

Q. Will you state whether or not you had occasion to use the shower-baths on that trip?

A. I did; I used them every day, sometimes twice a day.

Q. Please state whether or not you experienced any difficulty or found any danger in using it.

Mr. SMITH.—Objected to upon the ground that it calls for the conclusion of the witness.

(Testimony of Sam B. Stoy.)

A. Why I had no difficulty with the equipment; my memory is there was a sort of bowl to stand in, of porcelain, at the bottom, and when I took my shower, in case the ship lurched any I took hold of the pole on which the curtain was suspended or handle; that is, the faucet, as you call it, or a handle, as I remember it, that was in the back of the bath compartment.

Mr. CAREY.—Q. Do you know the libellant, Mr. Hutchins?

A. Yes, I know him.

Q. Do you remember the day when he was supposed to be hurt in using the shower-bath on the ship; was the circumstance called to your attention at that time? A. Yes.

Q. In what way was it called to your attention? [513]

A. Through his telling me that he had fallen while taking his shower-bath that morning and wrenched his shoulder or arm.

Q. Do you remember the weather conditions at that time? A. Yes.

Q. What was the condition?

A. So far as the ocean travel is concerned, the sea was fairly calm; that is, it felt so to my belief; I was fairly comfortable.

Q. Do you know whether you took a shower-bath that day? A. I did.

Q. Do you recall any difficulty experienced by you in so doing? A. No.

(Testimony of Sam B. Stoy.)

Cross-examination.

Mr. SMITH.—Q. What did Mr. Hutchins say to you?

A. He said he had fallen down with a lurch of the ship or slipped down, and did not consider the porcelain bottom good protection.

Q. What else did he say, if you remember?

A. I don't recall any material statement except when I saw him later in Honolulu he said that on medical examination he found he had his arm broken instead of being wrenched.

Q. Have you seen a photograph of the bath-rooms recently? A. Yes.

Q. Who showed you that photograph and where?

A. The claims agent of the steamship company one day last week, I do not just recall what day it was.

Q. That photograph showed you the handle affixed to the wall in the back part of the shower?

A. Yes, it was there and also the handle.

Q. Also which handle?

A. The handle with which we turned the water on.

Q. The faucet handle? A. The faucet handle.

Q. What did the agent say in regard to the handhold at the [514] back of the shower?

A. Nothing.

Q. Did you have any discussion with him or was anything said as between you concerning that handhold on the back of the shower?

A. I think I mentioned that or asked the question if that was there at the time I was on the ship, merely because my memory was not clear as to that, because

(Testimony of Samuel Symon.)

my habit was when the ship lurched a little, to reach up, as I am very tall, and grab the curtain pole right in front as I naturally would do. [515]

Testimony of Samuel Symon, for Claimant.

SAMUEL SYMON, called for the claimant, sworn.

Mr. CAREY.—Q. Where do you reside?

A. 785 Kingston Avenue, Oakland.

Q. What is your business?

A. Vice-president and general manager of the firm of Muir & Symon.

Q. Did your firm do some work in drilling marble in shower-baths and placing handles in the back of the shower-baths on the steamship "Great Northern"? A. Yes.

Q. When did they do that?

A. It was done from the 20th to the 25th of January of this year.

Q. 1916? A. Yes.

Q. How do you know the date?

A. Well, in checking up the date, we have got our requisitions, and when the job was finished—we started the job on the 20th and we finished on the 25th.

Q. Did your firm make those handles or did you purchase them?

A. We purchased them; in fact, I attended to the matter myself, went out and had the pattern-maker at Garratt's make a pattern and got the things cast there at the brass foundry, Garratt's brass foundry.

(Testimony of Samuel Symon.)

Q. Is that W. T. Garratt & Co., of San Francisco, California?

A. Yes, up on Fremont Street, W. T. Garratt & Company.

Q. Did that firm bill on Muir & Symon for that or on the steamship? A. Muir & Symon.

Q. Please examine the bill which I hand you and see whether that is the bill for the handles?

A. Yes, 10 nickle-plated pulls.

Q. What date?

A. It is billed here on the 25th; we got them on the 23d or 24th, probably on the 24th or 25th, a day or two ahead sometime.

Q. In January, 1916? A. Yes. [516]

Mr. CAREY.—I offer in evidence the bill of W. T. Garratt & Company referred to by the witness.

(The bill is marked Claimant's Exhibit 9.)

Q. Now, Mr. Symon, did your firm furnish the screws or bolts that were necessary in fastening these handles or did you purchase them?

A. We purchased them.

Q. From whom did you purchase them?

A. From Marwedel on First Street near Mission.

Q. Who attended to that,—did you or someone else? A. I attended to it.

Q. Did that firm bill on Muir & Symon or on the steamship for those items? A. Muir & Symon.

Q. I will show you two bills of C. W. Marwedel, San Francisco, California, to Muir & Symon, dated respectively January 4, 1916, and January 25, 1916, and I ask you whether those are the bills you refer to?

(Testimony of Samuel Symon.)

A. Yes. These first screws we got 50 of were 3 inches long, were for the job No. 86, as I marked it there when the bill came in; ordinarily we send a written order out for this stuff when we buy it, but these bolts are in and out so quick, when I attend to it myself I generally do not get the order number; that is why there was no order number on the bill; so when the bill came in it was referred to me and I put the order number on, 86.

Q. What does that 86 refer to?

A. That is the number of the job.

Q. That is Muir & Symon's number?

A. Muir & Symon's number; when the job comes in that job has got a number and the work for the job is charged up to No. 86.

Q. Now, this job on the "Great Northern" steamship, did it include other items besides the handles?
[517] A. It included a number.

Q. All were included, as I understand you?

A. In the one bill.

Q. No. 86?

A. Yes. I recall the instance so well, as the foreman on the job, Switzer, came up and told me that two of the handles, the marble was further away from the wood, and he did not have long enough screw fastenings, that he only had screws that would go in half an inch and asked me if he should let it go, and I said no; I immediately turned around and went up town and got 16 more screws $\frac{1}{2}$ inch longer to make them more secure.

Q. Are those the $3\frac{1}{2}$ inch screws that are in the

(Testimony of Samuel Symon.)

second of these Marwedel bills? A. Yes.

Mr. CAREY.—I offer in evidence the two bills identified by the witness.

(The bills are marked Claimant's Exhibit 10.)

Q. What is the practice in your firm in putting through a job as to making out requisitions and keeping track of the work and finally making a charge and rendering bills? Describe the process.

A. Well, the general rule is, if there is a job down there either Muir or myself go down and see the superintendent, and very often get a list from the chief steward or get a list from the mate or the chief engineer and go ahead with it; after we get the list we have these copies made of it.

Q. What do you call these copies?

A. That is a copy of the requisition.

Q. Is that the requisition which was referred to by Miss Snieder? A. The same requisition, yes.

Q. The same as Claimant's Exhibit No. 8 in this case? A. Yes, and we go down then— [518]

Q. —Wait a minute. State when it is that your firm gives a number to the job.

A. When we get the job.

Q. This number 86 at the top of this requisition, Claimant's Exhibit No. 8, was that the number of this particular job?

A. The number of this particular job, yes.

Q. For the "Great Northern" steamship?

A. For the steamer "Great Northern," yes. The job was given to us on January 20th and finished on January 25, 1916.

(Testimony of Samuel Symon.)

Q. Referring now to Garratt's bill, being "Claimant's Exhibit No. 9," there are some other items on the bill besides these handles, are there not?

A. Yes, nickle-plated pulls.

Q. The handles are described as nickle-plated pulls?

A. Yes, I might say, on account of there being three numbers there that Mr. Muir put on "Great Northern" "86" and then he referred it to me as "S C S" to put the number of these items on.

Q. Did your firm make out a bill against the "Great Northern" and owners for this job?

A. We did.

Q. No. 86? A. Yes.

Q. I call your attention to a typewritten sheet here and ask you whether or not that is the bill?

A. That is the bill.

Q. What date?

A. It is dated January 25, the date the job was finished.

Q. Now, have you any personal recollection about the date of this fastening of the handles on the ship in relation to the ship making a voyage to the Hawaiian Islands?

A. I think it was done the second trip.

Q. I mean was it done before the ship went to the island? A. Yes.

Q. It was done, finished by, you say, by January 26?

A. Finished up January 25, the last day we worked on it was January 25. [519]

(Testimony of Samuel Symon.)

Q. Did your firm do any work of this character for the steamer "Northern Pacific" at any time?

A. We did.

Q. When?

A. A week after—about a week after.

Q. February 3d and 4th, 1916?

A. Yes, that is the "Northern Pacific."

Q. What number was that job? A. No. 140.

Cross-examination.

Mr. SMITH.—Q. Where is the item, Mr. Symon, on your bill of January 25, 1916, to the "Great Northern" for grab-handles?

A. There, grab bars in all shower-baths.

Q. Do you know personally that these grab-handles were put on the boat? A. I do.

Q. You saw them? A. I saw them put on.

Q. At that time?

A. At that time, that particular trip, yes.

Q. Now, you testified that you put grab-handles in the shower-baths of the "Northern Pacific" a week later? A. About a week later.

Q. What was the date? A. February 3d and 4.

Q. You put similar grab-handles in all of the "Northern Pacific" showers at that time, did you?

A. Yes.

Q. Precisely the same kind of handle, in the same place? A. Yes, practically the same place.

Q. You saw them personally? A. Yes.

Q. So that you know by this date the grab-handles were in the shower-baths on both steamships?

A. Of both steamers, yes.

(Testimony of Samuel Symon.)

Q. What metal were these grab-handles made of?

A. They were made of bronze, brass and nickle-plated.

Q. What kind of screws did you use on them?

A. Roundhead screws, screwed right into the wood back of them. [520]

Q. Nickle-plated screws or brass screws?

A. Brass.

Q. Without nickle-plated heads then?

A. I would not say; I am pretty sure some were nickle-plated but the last ones I know were not, the long ones.

Q. They were just put in as brass screws?

A. As brass. We did not have time to get them nickle-plated. You just get the brass screw and take it down and have it nickle-plated.

Q. You did not do that? A. No.

Q. You just put it in without having it nickeled?

A. Yes.

(It is stipulated and agreed between counsel that the reading over of the testimony to the witnesses and the signing thereof is waived.) [521]

Claimant's Exhibit No. 1.



Claimant's Exhibit No. 2.

Claimant's Exhibit No. 3.



**Claimant's Exhibit No. 4—Mate's Log of
Steamship "Great Northern," Voyage No. 39.**

Mate's Log of Steamship Great Northern, Voy. #39 West From San Francisco to Honolulu via San Pedro and Hilo, and return. Date February 1916 18 Pilot House Compass S 43° W Standard Compass S 49° W Actual Distance 47.9 Distance by Log 747.9 Remarks Friday, February 18 1916 Retarded clocks 32 mins.

Time by Clock 4 Pilot House Compass S 43° W Standard Compass S 49° W Time on Course Hours 4 Min. 32 Actual Distance 38.4 Distance by Log 786.3 Revolutions by Wheel 284 Wind S. W. 2 Weather B Barometer 30 21 Thermometer 65 Remarks Fine and clear light breeze smooth sea heavy N W swell

Actual Distance 37.6 Distance by Log 825 Remarks Tanks and bilges sounded bilges dry

Time by Clock 8 Pilot House Compass S 43° W Standard Compass S 49° W Time on Course Hours 4 Min. 00 Actual Distance 38.6 Distance by Log 862.6 Revolutions by Wheel 283.7 Wind South. 4 Weather B. q. Barometer 30 27 Thermometer 73 Fresh Breeze passing squalls small sea heavy Nly swell.

Actual Distance 28.6 Distance by Log 901.2

Time by Clock 12 c/c Pilot House Compass S 42° W. Standard Compass S 48° W Time on Course Hours 4 Min. 00 Actual Distance 38.1 Distance by Log 939.3 Revolutions by Wheel 286.4 Wind S. W.

4. Weather B. C. Barometer 30 29 Thermometer 76 Remarks Fine weather mod breeze small sea mod swell

Latitude 26° 30' N Longitude 141° 19' W Course S 65° 06' W. Distance 461 Miles Runn Time 24 hours 32 mins. Av. Speed 18.79 Pilot House Compass S 42° W Standard Compass S 48° W Actual Distance 38.7 Distance by Log 978 Remarks Fine weather partly cloudy mod N. W. swell [525]

Time by Clock 4 Pilot House Compass S. 41° W Standard Compass S 48° W Time on Course Hours 4 Min. 00 Actual Distance 38.5 Distance by Log 1016.5 Revolutions by Wheel 286 Wind N. N. W. 3 Weather B. C. Barometer 30 27 Thermometer 70 Remarks Tanks and bilges sounded bilges dry.

Actual Distance 38.2 Distance by Log 1054.7.

Time by Clock 8 Pilot House Compass S 41° W Standard Compass S 48° W Time on Course Hours 4 Min. 00 Actual Distance 37.6 Distance by Log 1092.3 Revolutions by Wheel 285.8 Wind North 4 Weather B Barometer 30 36 Thermometer 67 Remarks Fine and clear weather fresh breeze heavy Nly swell

Actual Distance 40.2 Distance by Log 1132.5

Time by Clock 12 Pilot House Compass S 41° W Standard Compass S 48° W Time on Course Hours 4 Min. 00 Actual Distance 39.6 Distance by Log 1172.1 Revolutions by Wheel 287.5 Wind N. E. 4 Weather B. C Barometer 30.41 Thermometer 68 Remarks Fine weather mod breeze small sea heavy swell. [526]

Claimant's Exhibit No. 5—Time-card of W. J. Tomlin, Dated January 24, 1916.

MUIR & SYMON.

TIME CARD.

Name W. J. Tomlin.

Date Jan. 24/16.

Job Number	Hours Floor	Machine Worked	Articles Worked on	Material
79	1	✓	Bakers oven Northern Pacific.	
79	1	✓	Electric Toasters.	
86	11½	✓	Removing Ice Box Door Putting in new Ice Cream Box & Replacing Door G. N. S. S.	
86	41½	✓	Drilling Marble in Shower Baths Using Electric Drill 4 Hours.	
	8		N. P. S. S.	

[527]

Claimant's Exhibit No. 6—Time-card of W. J. Tomlin, Dated January 25, 1916.

MUIR & SYMON.

TIME CARD.

Name W. J. Tomlin.

Date Jan. 25/16.

Job Number	Hours Floor	Machine Worked	Articles Worked on	Material
#84	51½	✓	Steering Gear Great Northern.	
#86	1	✓	Washers in Ice Box Doors Butcher shop.	
#86	1	✓	Handles in Shower Baths.	
#85	1½	✓	Fastening Life Preservers.	
	8			

[528]

Claimant's Exhibit No. 7—Voucher.

GREAT NORTHERN.

Date.		Time	Rate	Amount
1916	Stewards Dept.	B.S. M. M.M. F. H. Boy		
Jan. 22	Bro't. forw'd.			93.70
" 22	F. McCormack (Tools, Lumber, pots, Tiles & 2 Bars)	6½		3.25
" 24	W. Tamlin	1½		.75
	Removing Ice Box Door, putting in new Ice Cream Box & Replacing Door			—
" 24	W. Tamlin	4½		2.25
	Drilling Marble in Shower Baths, Using Elec. Drill			
	4 hrs.	4		4.24
" 24	F. Switzer (Bake Oven, complete, as ordered)	1		.81
" 24	F. Switzer (Ice Chest in Butchershop)	1		.81
" 24	F. Switzer (8 Brackets for Joiner)	1½		1.22
	8 Brackets 2#		04½	.09
" 24	F. Switzer (Tables for Palm Garden)	1		.81
" 24	F. Switzer (Deck Chairs)	1		.81
" 24	F. Switzer (Guard for Range)	1		.81
" 24	F. McCormack (Chairs, Wicking, Cupholder, 2 Bars Iron)	7		3.50
" 24	C. West	½		1 —
	Lengthening 2 Bars 1#		04½	.05
" 24	H. D. Pruitt (Chairs)	7		3.50
" 25	L. Wing	4		3.25
" 26	Jas. Graham Mfg. Co.			
	3 Wire Handle Stove Knobs		30	.35
				<hr/>
				121.20

GREAT NORTHERN.

Date.		Time	Rate Amount
1916	Stewards Dept.	B.S. M. M.M. F. H. Boy	
Jan. 26	Bro't. forw'd.		121.20
" 22	O. Avelin (Drilling holes, Oven)	1	.50
" 22	O. Avelin (Drilling holes, Bench)	1½	.75
" 21	J. Switzer	4	3.25
" 21	T. Malti (Drilling holes for plumber)	8	4 —
" 22	W. Lindblom (plate in Bake Oven)	2½	1.25
" 22	W. Lindblom (Door Steam prover)	4	2 —
" 22	W. Lindblom (Angle on Table)	2	1 —
" 22	J. Switzer	8	6.50
" 22	O. Avelin (Bakers Drum)	2½	1.25
" 22	H. Bever (Making Brass pins for Settees)	1	.50
" 22	T. Malti (Tile in Galley)	2	1 —
" 24	O. Avelin (plate Bake Oven)	1½	.75
" 24	O. Avelin (Chairs)	5½	2.75
" 24	H. Bever (Making Brass pins for Settees)	3½	1.87
" 24	H. Bever (Grate Irons for Ranges)	2½	1.37
" 24	J. Switzer	8	6.50
" 24	O. Carlson (pipe fitting)	4	3.25
" 25	W. Tamlin (Washers in Ice Box, Doors, Butchershop)	1	.50
" 25	W. Tamlin (Handles in Shower Baths)	1	.50
			<hr/>
			160.69

American Steamship "Great Northern" et al. 551

GREAT NORTHERN.

Date.		Time	Rate Amount	
1916	Stewards Dept.	B.S. M. M.M. F. H. Boy		
Jan. 25	Bro't. forw'd.			160.69
" 24	W. Lindblom (plate Bakers Oven)	4	2	—
" 24	W. Lindblom (Ice Box Butchershop)	1		.50
" 24	W. Lindblom (Handles Shower Baths)	3		1.50
" 25	F. Switzer (Hole for plumber in Bake Shop)	1		.81
" 25	F. Switzer (Curtain Rods)	2		1.62
" 25	W. Lindblom (Ice box Doors)	1		.50
" 25	W. Lindblom (Handles Shower Baths)	$\frac{1}{2}$.25
" 25	F. McCormack (Angle, Cup- holder, Chairs)	5		2.50
" 21	O. Carlson (pipe fitting for New sink)	3		2.44
" 22	H. N. Cook Belt Co., #1881 1 pc. Belt Leather 7" wide x 3 ft. long		2.52	3.03
" 24	F. Zunio #1892, Rep'g. 2 Chairs		3 —	3.60
" 2	Henry Cowell Lime Co. #1886 1 Sk. Clay		87	1.05
" 22	Payne's Bolt Works #1875 50—1/4 x 3/4 Stove Bolts		15	.18
	25—1/ x 1 " "		10	.15
" 22	W. W. Montague #1883 6 pcs. 6 x 6 Red Quarries (3 used)		60	.72
				181.54

Claimant's Exhibit No. 8—List of Repairs and Improvements in Steward's Department of Steamship "Great Northern."

#86.

S/S. "GREAT NORTHERN."

Req. S. 27.

Stewards Dep't.

1st Cabin Kitchen Repairs.

✓Range Guard to be Cut in two pieces.

✓Guard around top of Broilers.

✓Water Pipe & Faucet in Bakers Shop.

✓Proof Box Overhauling.

✓Bake Shop Drum Overhauling & Flues Cleaning.

✓Ice Cream Scoop Repair.

✓Ice Cream Container retinning.

✓3—Sauce Pans, retinning.

✓1—Movable Table for Bake Shop.

Hinges on Doors of Bakers Chill Box overhauling.

✓Hinge on Door of Butchers Shop overhauling.

✓Hinges on Doors of 1st Cabin Pantry overhauling.

✓Scupper Drain in Refrigerator & Butchers Shop Repairing.

✓3—Tiles Kitchen Floor fastening & Renewing.

Strap up Bench in 1st Cabin Pantry repairing.

Strap up Table in 2nd Cabin Pantry "

✓Fix Handle of Faucet on Milk container 1st Cabin Pantry.

✓Knob on 1st Cabin Pantry Steam Table.

✓Need new, 6—Guards for Range.

✓5—Guards for Center Table in Main Kitchen.

One Table for 1st Cabin Pantry.

One Foot Board in front of Strap up Sink Main Kitchen.

√24—Deck Chairs to Repair.

1—Weather Strip on Pantry Table on Starb. Side.

√1—Dining Room Chair to Repair.

√1—Chair from Suites to Repair.

√1—Veranda Chair “ “

√2—Cane Bottom Chairs Smoking Room.

√Overhead Leak in Room 168 (VERY BAD).

Backs of all Settees fall down.

Hooks on all Bathroom Doors in Suites.

√Hot & Cold Water Connections in Showers, Bad Order.

Spring Supports.

Spring Claws.

√Asbestos Washers for Chandeliers for D. R.

√Asbestos Rings & Stops on Suites & Sofa Lights.

√Thin Wire Mesh Netting around Globes head of Beds in suites. Req. #S.

√Thin Wire Mesh around Clusters in Dining Room. Req. #S.

√Grab Bars in all Shower Baths. Req. #S.

√Packing replace on Silveh Machine & Overhaul. Req. #S. [530]

**Claimant's Exhibit No. 10—Receipted Bills of C. W.
Marwedel, Dated January 24–25, 1916.**

Established 1872.

Trade Mark
of the Cutter
it Means
Quick Service
Accuracy
Satisfaction

Private Exchange Douglas 4180.

C. W. MARWEDEL.

76–80 First Street

San Francisco, California.

MACHINISTS' AND ENGINEERS' SUPPLIES.

FINE TOOLS.

For all Classes of Metal Work.

Lathes, Drill Presses, Shapers, Milling Machines,
Planers, etc.

Copper, Brass and Steel.

Garage Supplies.

Date 1/24/16 #4

Cable Address "Mar"

Terms 30 Days Net.

Sold to Muir & Symon,

1015 Battery St.

Interest Charged on Overdue Accounts.

50 R. H. Brass screws #12 #3" 1 40 Dz 5 83

50% 2 92

86 86✓

[Stamped:]

MUIR & SYMON.

Order No. —

Charge Account 86

Bill Correct ✓

Established 1872.

Trade Mark
of the Cutter
it Means
Quick Service
Accuracy
Satisfaction

Private Exchange Douglas 4180.

C. W. MARWEDEL.

76-80 First Street

San Francisco, California.

MACHINISTS' AND ENGINEERS' SUPPLIES.

FINE TOOLS.

For all Classes of Metal Work.

Lathes, Drill Presses, Shapers, Milling Machines,
Planers, etc.

Copper, Brass and Steel.

Garage Supplies.

Date 1/25/16 #6

Cable Address "MAR"

Terms 30 Days Net.

Sold to Muir & Symon,

1015 Battery St.

Interest Charged on Overdue Accounts.

16 R. H. Brass wood sers #14x3 $\frac{1}{2}$

1 65 Dz

2 20

50%

1 10

 $\frac{1}{2}$ # Brass washers #6

50

 1 60

86

86

86✓

[Stamped:]

MUIR & SYMON.

Order No. —.

Charge Account 86

Bill Correct ✓

Certificate of Commissioner.

United States of America,
State and Northern District of California,—ss
City and County of San Francisco.

I certify that, in pursuance of the commission to take testimony hereunto annexed, on Monday, July 31, 1916, at 10 A. M., to which date an adjournment was taken from July 5th, 1916, at 10 A. M., before me, Ira A. Campbell, designated as Commissioner in the commission to take testimony hereunto annexed, at my office in the Merchants Exchange Building, 465 California Street, in the city and county of San Francisco, State of California, personally appeared Walter A. Scott, A. Ahman, H. K. Relf, John B. Morris, S. W. Jamieson, Charles Wall, George Grundy, W. B. Lowenthal, C. S. Mills, W. J. Tomlin, and J. B. Switzer, witnesses called on behalf of claimant in the cause entitled in the caption hereof, and John W. Cathcart Esq., of the firm of Thompson, Milverton & Cathcart, and Grant H. Smith, Esq., appeared as proctors for the libellant, and Charles H. Carey, Esq., of the firm of Carey & Kerr, appeared as proctor for the claimant; and the said witnesses being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by their depositions hereto annexed; that at the conclusion of the taking of said depositions an adjournment was taken until Monday, August 7th, 1916, at 2 P. M., at which time and at the same place personally appeared before me Katie Schnieder, Sam B. Stoy and

Samuel Symon, witnesses called on behalf of claimant in the cause entitled in the caption hereof, and Grant H. Smith, Esq., appeared as proctor for the libellant and Charles H. Carey, Esq., of the firm of Carey & Kerr, appeared as proctor for the claimant, [533] and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the cause aforesaid, did thereupon depose and say as appears by their depositions hereto annexed.

I further certify that said depositions were then and there taken down in shorthand notes by Edward W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties the reading over of the depositions to the witnesses and the signing thereof was expressly waived.

Accompanying said depositions and referred to and specified therein are Claimant's Exhibits 1 to 10, inclusive.

And I do further certify that I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the United States District Court for the District and Territory of Hawaii at Honolulu, Territory of Hawaii, the court for whom the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand at my office aforesaid, this 22d day of August, 1916.

(S.) IRA A. CAMPBELL,
Commissioner. [534]

Filed Nov. 6, 1916, at — o'clock and — minutes — M. (Sgd.) Geo. R. Clark, Clerk. By ———, Deputy Clerk.

In the District Court of the United States, in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, Apparel, Furniture, Boats and Appurtenances, and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein,

Libelee,

and

A. AHMAN,

Master and Claimant.

Deposition of Dr. Barney R. Simons, Taken Before William H. Whitaker, Esq., Commissioner, at the Office of Messrs. Biddle, Paul & Jayne, 505 Chestnut Street, Philadelphia, Pennsylvania, on Thursday, September 28th, 1916, at 10 O'clock A. M.

Present: The COMMISSIONER.

Messrs. THOMPSON, MILVERTON & CATHCART, by EDGAR J. PERSHING, Esq., Attorneys for Libellant.

Page 1. [535]

Page 2. Messrs. SMITH, WARREN & SUTTON, By HOWARD H. YOCUM, Esq., of the Firm of Messrs. BIDDLE, PAUL & JAYNE, Attorneys for Libellee, and A. AHMAN, Master and Claimant.

Dr. BARNEY R. SIMONS, Witness.

To the Clerk of the United States District Court for the District and Territory of Hawaii:

The deposition of Barney R. Simons of the city and county of Philadelphia and State of Pennsylvania, witness of lawful age, produced, sworn and examined on oath, on the twenty-eighth day of September, A. D. 1916, at the offices of Messrs. Biddle, Paul & Jayne, Attorneys, 505 Chestnut Street, Philadelphia, Pennsylvania, by me, William H. Whitaker, a Notary Public of the Commonwealth of Pennsylvania residing in the city of Philadelphia, commissioner herein, in pursuance of the commission to take

testimony issued to me, dated the 28th day of July, A. D. 1916, out of the United States District Court in and for the Territory and District of Hawaii, which said commission is hereunto annexed, for the examination of the said Barney R. Simons (described as B. R. Simons in Commission), witness, to

be read in evidence on behalf of the
Page 2. Libelee and A. Ahman, master and claim-
Page 3. ant, on the trial of a certain cause now
pending and undetermined in the said
United States District Court in and for the Terri-
tory and District of Hawaii, wherein Clinton James
Hutchins is libellant and the American Steamship
"Great Northern," libelee, and A. Ahman, master
and claimant of said steamship "Great Northern,"
follows:

United States of America,
Eastern District of Pennsylvania,
City and County of Philadelphia,

The said Barney R. Simons, being first by me duly sworn, [536] according to law, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the libellant as of the said steamship "Great Northern," and A. Ahman, master and claimant thereof, relative to the matters in controversy between the said parties, so far as he should be interrogated thereto, on oath, testified as follows:

Deposition of Dr. Barney R. Simons, for Libelee.
(By Mr. YOCUM.)

Q. Dr. Simons, you are a resident of the
Page 3. City of Philadelphia, State of Pennsylv-
Page 4. ania? A. I am.

Q. Where do you live?

A. 1102 Walnut Street.

Q. And what is your age?

A. Forty-four.

Q. You are a dentist by profession?

A. Dentist.

Q. How long have you practiced your profession?

A. Twenty-four years.

Q. In connection with your profession have you had any medical training?

A. I was employed in a hospital for several months in Milwaukee, Wisconsin, and I took a preparatory course for medicine but never completed the course of medicine.

Q. You had several years' study in medicine then?

A. I had several years' study in medicine, yes.

Q. And then several years' further study
Page 4. dentistry? A. Yes.

Page 5. This in addition to your hospital experience? A. Yes.

Q. You made a trip to Honolulu in the early part of 1916? A. February, 1916. [537]

Q. You took passage from San Francisco for Honolulu?

A. I boarded the steamer at San Pedro, a port near Los Angeles.

(Deposition of Dr. Barney R. Simons.)

Q. What steamer?

A. Steamship "Great Northern."

Q. She was a steamer of the Great Northern Pacific Steamship Company? A. Yes.

Q. You were accompanied by your wife on that trip? A. I was accompanied by my wife.

Q. Did you know or did you meet during that trip, Clinton J. Hutchins?

A. I didn't meet him. I saw the man aboard the steamer but I didn't know who he was.

Page 5. Q. There was an accident to Clinton J.

Page 6. Hutchins during the passage of the "Great Northern" from California to Honolulu?

A. There was an accident to a passenger whom I afterwards found to be Clinton J. Hutchins.

Q. Was Mr. Hutchins also accompanied by his wife? A. Yes.

Q. Can you recall whether Mr. and Mrs. Hutchins occupied staterooms near yours.

A. On the same side of the ship near mine.

Q. You saw Mr. Hutchins frequently?

A. Frequently.

Q. Both before and after the accident.

A. Before and after the accident.

Q. Can you give me a very general description of the man—not as to hair or the color of his eyes, but as to his general physique?

A. Why, Mr. Hutchins was a man about five feet seven inches tall, weighing about two hundred to two hundred twenty pounds and very heavy from the

(Deposition of Dr. Barney R. Simons.)

waist line up. Enormously thick through
Page 6. the [538] shoulders. I would say he is
Page 7. rather short-legged. That is about as near
as I can describe the man's make-up.

Q. From your knowledge by reason of your training and your experience what would you say as to his balance?

A. Well, I should say the man is balanced as well as a man of that height and weight could be balanced. I shouldn't say that he could take care of himself as quickly as a man one hundred fifty or one hundred seventy pounds. He was a heavy-set man and a man probably between fifty-five and sixty years of age. For the man's build I should say he is pretty well balanced.

Q. What would you say of the balance of a man of his build as compared with the ordinary man of lighter weight and better distributed?

A. Well, he was pretty heavy. I wouldn't say he was well distributed, that is, his weight was well distributed. He is a bit top-heavy and very heavy
across the shoulders and through the
Page 7. chest.

Page 8. Q. Dr. Simons, Mr. Hutchins' accident occurred in one of the shower-bath rooms on the "Great Northern," did it not?

A. My recollection is that he slipped before he got in the shower, that is, between the two baths.

Q. But it was in the shower-bath room?

A. Shower-bath room, yes.

Q. Are you familiar with the shower-bath room?

(Deposition of Dr. Barney R. Simons.)

A. Yes.

Q. Were you present and saw the accident?

A. I was the only one present and the only one that saw the accident.

Q. Had you been in that shower-bath room prior to the accident and subsequently?

A. I had, yes.

Q. Can you tell us generally how the room is constructed? [539]

(Mr. Pershing suggests to the witness:)

Page 8. Q. Will you draw a plan?

Page 9. Mr. YOCUM.—I have no objection.

The WITNESS.—I have drawn a plan marked with my initials—"B. R. S."

Mr. YOCUM.—Q. Will you just briefly describe your plan telling just what that room is made of?

A. The shower-room was located about amidships—between the port and starboard side—I do not mean amidships between the bow and stern—I mean laterally. There was a door leading from the passageway on the port side into the shower-room and another door from the passageway on the starboard side. The room that contained the showers proper was probably thirty feet square and on the one end of the room—I think the after end of the room—were a row of wash-basins extending right across the room. On the forward end were two

Page 9. shower stalls built—to the best of || my

Page 10. recollection—of marble slabs. To prevent water flowing into the lobby of the shower-room they had provided a porcelain basin to

(Deposition of Dr. Barney R. Simons.)

catch the water from each of these showers. The drop in the center of the basin, I should say is about two inches at a fair estimate. The outer edge of the basins which I have marked with a dotted line is about four inches from the floor. The space between the showers and the wash-basins which I have marked as "lobby" is used for drying purposes and on this morning, or the morning of the injury, contained piles of Turkish towels, that is, piled up on the floor. [540]

Q. Doctor, the openings in the showers faced each other?

A. The openings in the showers faced each other.

Q. And between the showers there was a passageway?

A. Between the showers there was a passageway.

Q. The walls of the showers were of marble?

A. Marble.

Q. And the basins were the porcelain
Page 10. basins that you have referred to?

Page 11. A. Were the porcelain basins I have referred to, yes. They were the regular stock basins that you see in every plumbing store where they sell showers or bath-room supplies.

Q. They were built above the level of the floor for what purpose?

A. For the purpose of catching the water that comes from the shower overhead.

Q. Were the edges sharp or were they broad and round? A. They were round—smooth.

Q. There was a slight drop toward the center of

(Deposition of Dr. Barney R. Simons.)

the basin for what purpose?

A. For the purpose of catching the water and not to permit it to flow out into the lobby of the shower-room.

Q. By the by, have you had any occasion to investigate these showers and porcelain basins of this type?

A. I have had occasion to investigate them because I intended to put them in my cottage in Massachusetts and I have observed that they are
Page 11. the stock basin.

Page 12. Q. Was this shower as constructed on the "Great Northern" the usual and modern type of stock basin in every particular?

A. The stock basin in every particular, yes.

Q. Both as to distance from the floor and to slope in the basin? [541]

A. In every particular, yes.

Q. Would you say from your inspection of it and your knowledge of these basins that the slope was only such as would carry and drain off the water?

A. Carry and drain off the water, yes.

Q. Those basins were about twenty-four inches square?

A. About twenty-four inches square. That made them over all about thirty inches.

Q. Did the two showers with the passage between them occupy the entire space on the end of the shower-room opposite the wash basins?

A. No, they did not.

Q. There are on either side of them—both star-

(Deposition of Dr. Barney R. Simons.)

board and port—spaces otherwise utilized?

Page 12. A. Yes.

Page 13. Either for bathing or some other purpose? A. Yes, sir.

Q. So that your drawing is only—

A. Is only a drawing in a general way.

Q. And does not intend to represent the situation exactly?

A. It is exaggerated for the purpose of showing that portion which is pertinent to this case.

Q. What was the floor of the bath-room made of?

A. Tile—small tile blocks.

Q. What was the general condition of the tile and the showers as to state of repair?

A. I would say good.

Q. Why?

A. The ship was practically new and I used the showers myself for two or three mornings prior to this accident and the whole construction and all appeared very strongly to me. I saw nothing wrong with the shower, or the basin or the floor. [542]

It struck me as an || admirable
Page 13. shower. In every way in keeping with
Page 14. the boat which was a beautiful ship.

Q. The ship was new itself and the shower-bath was also new and it so appeared?

A. Yes.

Q. What was its condition as to lighting?

A. It was lighted by electric lights and was well lit up.

(Deposition of Dr. Barney R. Simons.)

Q. On the morning this accident occurred it was well lit up? A. Yes.

Q. About what time was the accident?

A. I should say between seven and eight o'clock in the morning. I didn't pay any attention to the time but I should say it was between seven and eight o'clock.

Q. You found the room adequately lighted and everything was perfectly visible?

A. Everything perfectly visible, yes.

Page 14. Q. What was the condition of the room
Page 15. as to cleanliness?

A. I should say the room was clean. I saw no evidence of any soap used. There was no soap to be used except in the wash basins and the floor was covered here and there with Turkish towels. The floor between the passage of the two showers was wet as a result of people stepping out from under the shower with the water dripping from their persons but I wouldn't call that dirty.

Q. Except for the fact that the floor between the showers was wet with water, was there anything else on it. I mean between the basins or showers, was it perfectly clean?

A. Nothing else was on it. It was wet as a result of people stepping out from under the showers with water dripping from their persons.

Q. I mean was there anything other than water on it?

A. Not that I saw. I couldn't see anything but water. [543]

(Deposition of Dr. Barney R. Simons.)

Q. And so far as you know it was clean?

A. So far as I saw it was clean.

Page 15. Q. Did you use the shower that day

Page 16. after the accident?

A. After they got Mr. Hutchins out of the room I used the shower.

Q. You used the passageway between the showers?

A. I used the passageway to step into one of the showers.

Q. How did you find the floor of the passageway when you used it?

A. I didn't notice anything unusual. Same as it was the previous mornings.

Q. Clean? A. Clean, yes.

Q. Was it any more slippery than such slipperiness as comes from clean water on a clean floor?

A. No more so; no.

Q. Was the water there in any quantity or was it just merely the water which dripped from persons using the showers?

A. Just the result of the water dripping from the persons when they stepped from under the shower.

Q. The tile floor was not covered with a rubber mat was it?

Page 16. A. It was not, no.

Page 17. Q. Do you regard a rubber covering for a bath-room as sanitary?

(Mr. Pershing objects.)

Mr. YOCUM.—On what ground?

Mr. PERSHING.—Generally.

Mr. YOCUM.—I wish you would specify the par-

(Deposition of Dr. Barney R. Simons.)

ticular character of your objection, if to the form of the question I will change the [544] form, if to the experience of the witness I will qualify him.

Mr. PERSHING.—I think the witness should be qualified.

Mr. YOCUM.—Q. Doctor, you have had medical experience and hospital experience and are familiar with principles of sanitation? A. Yes.

Q. In the practice of dentistry you have had to consider and study matters of infection,
Page 17. or sanitation, very carefully, haven't
Page 18. || you?

A. I have considered and studied carefully.

Q. You have also, as you say, in connection with your own home, investigated the question of bath-rooms, and showers and their equipment?

A. Yes.

Q. Now, I will renew my question and ask your opinion as to the use of a rubber floor or other floor of that type in connection with a bath-room used as this was, generally on a ship?

(Mr. Pershing still objects on the ground that the witness does not claim to have investigated the question of the use of rubber on bath-room floors on steamships where conditions are different than they are in ordinary domestic establishments.)

Mr. YOCUM.—Would you regard principles of sanitation of more importance on a steam-
Page 18. ship where a bath-room is used generally
Page 19. by travellers than in your home?

(Deposition of Dr. Barney R. Simons.)

I would regard the principle of sanitation more important on a steamship than I would in my home because of peculiar conditions [545] on the steamship. I think it is much more difficult to keep a steamer in a hygienic condition than it would be in your home.

Mr. PERSHING.—Q. Would the fact, Doctor, of the motion of the boat in rough weather qualify your opinion as to the necessity of having rubber floor covering, as a matter of safety in spite of your opinion on the question of sanitation?

Mr. YOCUM.—I think that at the present state of the examination this question is objectionable, but the doctor may answer.

A. Well, that is a pretty hard question for me to answer. I have traveled on a great many steamers, but I don't remember seeing rubber mats on any of them, and I don't remember hearing of anyone falling in the bath. This is the first time it has been brought to my attention.

Mr. YOCUM.—Q. Would you regard the use of rubber mats on the floor of a bath-room on a steamship such as the "Great Northern" as sanitary?

A. No, I would not regard them as sanitary as the tile floor.

Q. In your opinion would any rubber mat provide against slipping unless it was a mat which covered the entire floor?

A. I should say that if the mats were of good size they would help considerably. I say good sized in

(Deposition of Dr. Barney R. Simons.)

proportion to the size of the room.

Q. But a small mat would provide practically no protection? A. No.

Q. You say that you have travelled extensively and that you have never seen rubber mats used on bath-room floors on shipboard? A. I never have.

[546]

Q. From your experience how would you regard the equipment of this shower-bath room, its showers, including its basins and general appurtenances, so far as you observed them on the day of the accident.

Page 20. A. I would say they are first class.

Page 21. Q. There was no obligation on the part of any of the passengers of the steamship to take a bath?

(Objected to by Mr. Pershing.)

A. No.

Q. Can you recall the date of the accident?

A. As near as I can remember it was the morning before the ship arrived at Hilo, and, I think that was the eighteenth of February last.

Q. You had left the port of San Pedro and were on the way to Hilo? A. Yes.

Q. What was the condition of the sea and weather at the time of the accident?

A. The weather was bad and the sea was very rough.

Q. How do you recall that it was rough?

A. Most of the night before I was laying there awake. It was so rough I couldn't sleep. I like

(Deposition of Dr. Barney R. Simons.)

to have rolled out of the upper berth which I occupied. That morning the steward called
Page 21. me and said my bath was ready, and I
Page 22. didn't want to go because of || the pitching
and rolling of the ship. I told my wife
I didn't think I would, go, and she said, "You haven't
missed a morning bath in a year and you may be sorry
if you don't take one." And I got out very cau-
tiously and went to the shower and supported my-
self with my hand on each side of the passageway—
that is, on the wall of the passage—as I went along.
It was impossible to walk straight, unassisted, with-
out holding on to the sides of the passageway. [547]

Q. When you entered the bath-room was Mr. Hutchins there?

A. Mr. Hutchins stood in the space between the two showers—the passageway between the two showers at a point where I have placed the X with a circle around it on the plan.

Q. Will you tell us just exactly what happened?

A. Mr. Hutchins stood where I have marked the plan with an X and a circle around it and as he was a large man he occupied practically the entire passageway so I couldn't enter the shower opposite the
one in which he was tempering the water.
Page 22. I sat down on the stool marked on the
Page 23. plan with a square and observed || Mr.
Hutchins until such time as he might get
out of the passageway so I could enter the opposite
shower. Mr. Hutchins stood with his left hand
against the wall marked XXX on the plan and with

(Deposition of Dr. Barney R. Simons.)

his right hand he was tempering the water—I might say, feeling the temperature of the water. The ship at about this moment lurched. At the same time Mr. Hutchins endeavored to step in to the shower. He stepped with his right foot forward, resting his weight on the left—

(By Mr. PERSHING.)

Q. Which one did he step into?

A. This one here—marked H on plan.

WITNESS.—(Continuing.) When his left foot slipped from under him and he fell with his left shoulder upon the edge of the basin of the shower marked S. He fell helplessly—I mean by that he had no chance to catch or save himself whatever, as he fell. I went to Mr. Hutchins' aid, that
Page 23. is, I dragged him out from his position,
Page 24. catching him by the feet. I got him into the lobby of the shower-room and found that he was unconscious.

(By Mr. YOCUM.)

Q. Do you recall whether he was rendered unconscious immediately by the fall? [548]

A. Well, I got him out immediately and he was unconscious. I would say that he was rendered unconscious by the fall. I called for aid by pressing the button provided for that purpose in the lobby of the shower-room and that call was answered by a ship steward. I told him that there was a man injured and to get the ship's surgeon immediately. The surgeon responded without undue loss of time—as quickly as he could get to that part of the boat—

(Deposition of Dr. Barney R. Simons.)

but by the time the surgeon entered the room Mr. Hutchins had recovered consciousness. We assisted Mr. Hutchins to a stool resting his back and head against a side wall of the lobby. I offered to get some brandy, which suggestion was agreed to by the ship's surgeon but Mr. Hutchins refused to take it.

He complained of severe pain in the heart
Page 24. and shoulder. In fact he gasped these
Page 25. words very inaudibly— || hardly a whis-

per—placing his right hand to his heart and then lapsed into an unconscious condition again and at this moment the ship's surgeon assisted by the steward and myself carried him out of the bathroom lobby down into the aisle when I let go my hold as there wasn't sufficient room for us three to hold him and pass. They started toward Mr. Hutchins' room and I presume they took him there.

Q. At the time Mr. Hutchins fell he was in the act of stepping into the shower?

A. Basin. Stepping under the shower.

Q. He slipped when his one foot was still in the passageway and the other was in the air?

A. Was in the air.

Q. And it was the foot which was still in the passageway which slipped out from under him?

A. That is right.

Page 25. Q. And it occurred coincident with the
Page 26. lurching of the ship?

A. Coincident with the lurching of the ship. [549]

Q. He stepped with which foot?

(Deposition of Dr. Barney R. Simons.)

A. With right foot resting his weight on the left.

Q. As he stepped did he support himself against the side of the shower or did he just step in?

A. I can't recall that. The last I can recall is where he stood with his left hand against the wall which I have marked with the three X's (XXX). I can't say whether or not he dropped this left hand as he started to step under the shower.

Q. He didn't support himself with the right hand?

A. I didn't see that there was anything there to support him with the right hand.

Q. Could he not have supported himself by placing his right hand against the side of the shower?

A. He could have caught ahold of that marble slab. He could have caught ahold of the
Page 26. slab on the after side of the shower marked
Page 27. (Y) with || his right hand. Of course
I can't say what support that would have given him.

Q. At the time of the accident I understand you to say it was very well lighted and all the conditions which existed were perfectly obvious to him?

A. Yes.

Q. During the period you were in the shower-room there was evidence of the rough weather?

A. Yes.

Q. The ship was pitching and rolling and lurching occasionally? A. Yes.

Q. Do you recall whether there were supports or handles in the shower?

A. I don't remember seeing them. I think not.

(Deposition of Dr. Barney R. Simons.)

Q. It is possible that they might have been there?

A. They might have been there but I don't remember seeing them.

Q. Did you see Mr. Hutchins subsequent
Page 27. to the accident? A. I did. [550]

Page 28. Q. When and where?

A. I saw him on the deck taking his usual exercise,—that is, his usual walking exercise, the afternoon of the morning of the accident and I stopped him and asked him how he felt. He said that he had heard that I helped him out from under the shower and he thanked me very cordially. I asked him how he felt. He said that he felt all right except that he felt rather bruised, a bit sore, but the doctor said there was no harm done except for the bruise and that he would be all right in a few days. I remarked that he fell rather hard. He said yes, he thought that the way his arm felt, but he would hold no grievance against the company if they would only provide some protection for passengers in the future.

Q. Did you see him later?

A. I saw him when we arrived at Hilo.

Q. Did you see him at all on the night of
Page 28. the accident? A. I did.

Page 29. Q. Where and under what circumstances?

A. Why, he took part in a mock trial aboard the steamer—acted as judge I think.

Q. Did he take part as all of the others in the performance?

(Deposition of Dr. Barney R. Simons.)

A. He took part as all of the others. I think he acted as judge in that proceeding.

Q. Did he give any evidence of inconvenience?

A. No, he sat there and seemed to be in a very good humor. He was jesting and carrying on. He didn't give evidence of being hurt or inconvenienced. In fact, I remarked to my wife that he couldn't have been hurt very badly as he took an active part in this mock trial.

Q. You also saw him about at Hilo?

A. I saw him when he was going down the gang-plank on the steamer. He went down just the same as he would under ordinary conditions. [551]

Q. Was his arm carried in a sling?

A. I didn't see his arm in a sling.

Page 29. Q. Physically he was a man with much
Page 30. flesh about the shoulder?

A. Much flesh.

Q. Did you see him subsequently?

A. I saw him in the City of Honolulu—about possibly two days after my arrival there.

(By Mr. PERSHING.)

Q. How many days was this after the accident?

A. That would be three or four days after the accident.

Q. Was he carrying his arm in a sling then?

A. Yes, he then had his arm in a sling.

(By Mr. YOCUM.)

Q. Doctor, subsequent to the accident you took a bath?

A. I did. That is, shortly after we helped him

(Deposition of Dr. Barney R. Simons.)

out of the lobby and into the passageway I went back and took a bath.

Q. How did you find it?

A. Nothing unusual about it except it was rough and I had to be careful.

Page 30. Q. Can you tell me whether you found it

Page 31. any more slippery than is usual upon a tile floor of this type? A. No.

Q. You took your bath within fifteen minutes after the accident?

A. Less than that—no,—I spent probably fifteen or twenty minutes with Mr. Hutchins there getting the doctor and sitting him up on the chair. It was shortly after I—I returned right after I *left* go Mr. Hutchins and the doctor and steward took him to his stateroom.

Q. It was within a short time?

A. Within fifteen or twenty minutes after the accident? [552]

Q. And at that time there was no change in the condition of the floor? A. None whatever.

Q. You used the same passageway in which Mr. Hutchins had fallen? A. I did.

Page 31. Q. In your judgment, from the actual ob-

Page 32. servation of the basin, was there any more slope in it than was reasonably necessary for drainage? A. No.

Q. In your judgment was the general construction of the showers and of the bath-room reasonably safe?

(Mr. Pershing objects, not on the ground that it is leading, but in general.)

(Deposition of Dr. Barney R. Simons.)

A. I should say, yes.

Q. I understand you to say that no one else witnessed the accident? A. No one.

Q. No one else in the room? A. No one else.

Q. The few towels that you say lying on the floor had absolutely nothing to do with the accident itself? A. No.

Q. Doctor, you said that Mr. Hutchins
Page 32. had fallen very suddenly || without op-
Page 33. portunity to catch himself as he fell.

What do you mean by that?

A. I mean that he didn't have an opportunity of getting his left hand under him to break the force of his fall.

Q. He fell suddenly.

A. Yes, he fell without any possible way of catching or stopping himself. That is, he fell so quickly he couldn't get his hand out to save himself. It was simply as if you had pulled both legs from under him and he fell down. [553]

Q. No opportunity in time to do anything?

A. Yes.

Cross-examination.

(By Mr. PERSHING.)

Q. Doctor, referring to your plan and the basin marked H, was that a glazed porcelain surface?

A. Yes.

Page 33. Q. Referring to the flooring in the pas-
Page 34. sageway marked X with the circle was that a glazed floor, tile floor?

A. Glazed tile floor—the same as that of the lobby.

(Deposition of Dr. Barney R. Simons.)

Q. I understand that rubber curtains were hanging in front of the shower above the dotted lines?

A. Yes.

Q. And that there was no handle on the marble side of the shower on the front where I have marked Y in a circle? A. No handle. That is right.

Q. Now, when you first saw Mr. Hutchins standing at the point marked X with the circle, you say he had his left hand extended and against the rear wall marked with a triple X (XXX)?

A. That is right.

Q. And his right hand was reaching into the shower space? A. That is right.

Q. And you don't know whether at the time of his fall Mr. Hutchins still had his left hand
Page 34. against the partition marked triple X
Page 35. (XXX)? A. I don't know.

Q. Do you know whether he had an opportunity to grasp the marble frame (Y) at all as he fell?

A. I don't think he had an opportunity to do so.

Q. Do you know whether between the time of Mr. Hutchins' fall and the time you took your bath any of the attendants had [554] wiped up the floor in the lobby where Mr. Hutchins' fell?

A. I do not know. It is possible they did or possible they did not. I don't know.

Q. You have seen in bath-rooms on ships and elsewhere rubber mats placed on the floor of shower-baths and the approaches thereto?

Mr. YOCUM.—I object to this question because

(Deposition of Dr. Barney R. Simons.)

of its inclusion of ships and other places. I have no objection if the reference is made to ships.

A. I have never seen them on ships. I have seen them elsewhere. I will qualify this by Page 35. saying I have seen them in bath-tubs on Page 36. ships.

Q. You have traveled extensively on ship-board. A. I have.

Q. Do you remember having seen on first-class steamers such as the "Great Northern" bath-rooms tiled in rubber tile?

A. I don't know that I have.

Q. Of what material was the rear wall marked triple X (XXX) constructed? A. Marble.

Q. Was it polished marble?

A. Polished marble.

Q. And the side wall at (Y) (Y with the circle), was that polished marble? A. Polished marble.

Q. Do you recollect whether the rubber curtains hanging over the dotted lines were pushed fore or aft at the time Hutchins was standing in

Page 36. front of that bath?

Page 37. A. I do not recollect.

Q. They did push both ways? A. Yes.

Q. Then you don't know whether he could have grasped the rubber curtains?

A. That wouldn't have saved him if he did. [555]

Q. When you arrived in the lobby of the bath-room Hutchins was the only other person there, I believe?

A. The only other person there.

Q. No attendant was in sight?

(Deposition of Dr. Barney R. Simons.)

A. No attendant was in sight.

Q. I understood you to say that you do not recollect seeing any handles on the side wall or rear wall marked triple X (XXX).

A. I don't recall seeing any handle there.

Q. And if it had been you would have seen it?

(Objected to by Mr. Yocum.)

A. Well, I couldn't say that because it didn't interest me. I myself didn't have occasion to use it.

Q. You saw Mr. Hutchins on the after-
Page 37. noon of the day, the morning, of the acci-
Page 38. dent on deck? A. That is right.

Q. And you had some conversation with him? A. I did.

Q. Was any reference made at the time by him at all as to the question of handles on the wall marked triple X (XXX)?

(Mr. Yocum objects on the ground that the question is immaterial, improper and irrelevant.)

A. No reference was made.

Q. Did you have after the accident any occasion to examine as to whether there were or were not handles on the wall marked triple X (XXX)?

A. I had no occasion.

Q. Did any discussion or reference to such handles take place between Hutchins and yourself at your subsequent meetings?

A. Not in relation to handles, no.

Q. What did the ship doctor say to you
Page 38. when he arrived immediately || after the
Page 39. accident?

(Deposition of Dr. Barney R. Simons.)

(Objected to by Mr. Yocum as immaterial, improper and irrelevant.)

A. He didn't say anything I can recall. I told him when he entered what happened. [556]

Q. Did he ask you for any general description or history of the accident? A. No.

Q. He immediately took charge of the case?

A. He took charge of the case.

Q. Did you have any subsequent discussion with him about the seriousness of this accident?

(Objected to by Mr. Yocum.)

A. I stopped him as he passed me on the deck and asked him how his patient was.

Q. When?

A. Possibly two hours after the accident.
Page 39.

Page 40. Q. And what was his reply?

A. He said that he is getting along very nicely. That he was badly bruised. That he gave him a hyperdermic and he came around all right. That was the sum and substance of our conversation.

Q. Nothing was said by him or by you as to whether there was a broken bone in the arm?

(Objected to by Mr. Yocum.)

A. No.

Q. He didn't say whether he had made any examination to determine whether or not there was a bone broken?

(Objected to by Mr. Yocum.)

A. His conclusion was that Hutchins' arm was just a bit bruised.

(Deposition of Dr. Barney R. Simons.)

Q. Doctor, in direct examination you stated that you had made some study of the sanitary questions arising on the use of rubber mats in bath-rooms. Would you say that conditions on shipboard in rough weather would qualify your opinion as to the use of such mats and that where rough weather was to be [557] expected that the question of safety would be more important than the question of
Page 40. sanitation?

Page 41. A. No, I say the question of safety would be more important.

Q. Doctor, was the floor of the passageway a level one or did it have a slope?

A. Slightly crowned.

Q. So that it was a little higher in the center where Hutchins stood than it was at the edge of the baths?

A. A little higher.

Q. And the basins were a little lower? Several inches lower?

A. Are you referring to the center of the basins?

Q. Yes.

A. I should say two inches lower than the upper edge of the basin.

Q. By the upper edge you mean the line along the dotted line?

A. The line of the basin. Yes.

Q. I understand, however, that Hutchins had not yet placed his foot into the basin when he fell?

A. That is my observation. His foot
Page 41. had not been put down in the basin. It
Page 42. had been raised in the air in the act of

(Deposition of Dr. Barney R. Simons.)

stepping in and was over the basin line.

Q. Did you notice during the mock trial the evening of the day of the accident, whether Mr. Hutchins was using his left arm?

A. I did not notice.

Q. That entertainment, I suppose had been arranged in advance?

A. It was arranged in advance.

Q. I suppose he participated by arrangement?

A. By arrangement. [558]

(By Mr. YOCUM.)

Q. You said there may have been no opportunity for Mr. Hutchins to support himself. Of course, the presence or absence of a handle on the far side of the shower compartment was absolutely immaterial as this accident happened.

A. He never could have reached it if it was there.

Q. How long a time elapsed after you reached the shower-bath to assist Mr. Hutchins
Page 42. toward his stateroom until you returned
Page 43. to take your shower?

A. Probably two minutes.

Q. When you came back you saw no one in the room making any attempt to clean up?

A. No. The steward answered my call and assisted the doctor in carrying the injured man to the stateroom. There was no one there after I went to take my shower.

Q. You saw no one else come in?

A. No one came in.

(Deposition of Dr. Barney R. Simons.)

Q. Was the shower-bath room within your observation all that time?

A. Well, I had my back to the lobby of the shower-room but there might have been some one in that got in and out. But if it did happen it happened within two or three minutes' time.

Q. Doctor, how much water was on the tile floor in the passageway between the showers?

A. The entire passageway I should say was drained off owing to the crown of this
Page 43. passageway.

Page 44. Q. Whatever the conditions were they were perfectly obvious to you?

A. Yes.

Q. And they were perfectly obvious to anyone who would look for them?

(Objected to by Mr. Pershing).

A. Yes. [559]

Q. You said that the porcelain was glazed and the tile floor was glazed. That is the usual construction?

A. The usual construction, yes.

(By Mr. PERSHING.)

Q. Doctor, in your redirect examination, Mr. Yocum asked you a question as to the possibility of reaching a handle on the inside wall of the shower and you said he couldn't have reached it, did you refer to a handle that might have been on the wall?

A. Yes.

Page 44. Q. Then, as I understand it, there was

(Deposition of Dr. Barney R. Simons.)

Page 45. still no reason why Hutchins should not have reached and held himself by one on the triple X (XXX) wall?

A. If there was a handle there he could have held on to is. Most any one would because that would have been the only security he had and the only available one.

Q. So that a handle at any other place than on the wall marked triple X (XXX) or the point marked (Y) would not have been available to him?

A. That is right.

(By Mr. YOCUM.)

Q. But whatever the conditions may have been on the wall marked triple X or at the point marked (Y), they were all perfectly obvious to any one using the shower? A. Yes.

Recross-examination.

(By Mr. PERSHING.)

Q. Doctor, was there a rubber mat in the small hallway between the two showers?

Page 46. A. There was not.

Q. Were there any rubber mats in the shower-bath? A. No.

Q. Or any rubber mats in any part of the lobby?

A. No. [560]

(By Mr. YOCUM.)

Q. Doctor, you have told both our office and Mr. Pershing's office the facts of the case prior to your testimony and have merely stated the facts as you recalled them? A. Yes.

(Signed) BARNEY R. SIMONS.

Sworn to and subscribed before me this 20th day of October, A. D. 1916.

[Seal] (Signed) WM. H. WHITAKER,
Commissioner.

I, William H. Whitaker, a notary public of the
commonwealth of Pennsylvania, residing in
Page 46. the city of Philadelphia, Commissioner ||
Page 47. herein, do hereby certify that in pursuance
of the annexed commission to take testimony issued to me out of the United States District Court for the Territory and District of Hawaii dated the 28th day of July, A. D. 1916, I caused the said B. R. Simons, the witness named in the said Commission and whose name is subscribed to the foregoing deposition, to appear before me on the twenty-eighth day of September, A. D. 1916, after giving due notice to counsel for all parties concerned, as specified in said commission to me; that previous to the commencement of the examination of the said B. R. Simons, he was sworn by me according to law, to testify the truth, the whole truth, and nothing but the truth, relative to the matters in controversy in the said cause now pending and undetermined in the United States District Court for the Territory and District of Hawaii between Clinton James Hutchins, Libellant, and the American Steamship "Great Northern," and A. Ahman, Master and Claimant of said Steamship, so far as he should be
interrogated concerning the same; that
Page 47. the said deposition was taken at the offices
Page 48. of Messrs. Biddle, Paul & Jayne, || Attorneys, 505 [561] Chestnut Street,

Philadelphia, Pennsylvania, on the twenty-eighth day of September, A. D. 1916, between the hours of 10 o'clock A. M. and 1 o'clock P. M. of said day, and was reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the event of the same; that after said deposition was taken by me as aforesaid, the interrogatories and the answers thereto of said witness as written down were read over by said witness and that thereupon the same were duly signed and sworn to by the said witness, B. R. Simons, before me, at the place and on the day and year aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial seal this 20th day of October, A. D. 1916.

[Seal] (Signed) WM. H. WHITAKER,

Commissioner,

Notary Public of the Commonwealth of Pennsylvania, Residing in the City and County of Philadelphia.

Page 48. Commission expires March 9, 1919.

[562]

Filed Jan. 9, 1917, at 11 o'clock and — minutes A. M. (Sgd.) Geo. R. Clark, Clerk. By ———, Deputy Clerk.

*In the District Court of the United States, in and for
the Territory and District of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libelant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, Apparel, Furniture, Boats and
Appurtenances and Against All Persons Hav-
ing or Claiming to Have Any Interest Therein
and Against All Persons Lawfully Intervening
in Their Interest Therein,

Libelee,

and

A. AHMAN,

Master and Claimant.

Depositions.

BE IT REMEMBERED that on Saturday, October 21st, 1916, and on Monday, October 23d, 1916, to which date an adjournment was regularly taken, at my office in the Merchants Exchange Building, 465 California Street, in the city and county of San Francisco, State of California, in pursuance of the stipulation hereinafter set forth, personally appeared before me, Ira A. Campbell, designated as commissioner, Francis G. Lefebre, a witness called on behalf of the libelant and J. B. Morris and William Paul Metzler, witnesses called on behalf of the claimant.

John H. Smith, Esq., appeared as proctor for the libelant, and Charles H. Carey, Esq., of the firm of Carey & Kerr, appeared as proctor for the claimant, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth. [563]

(It is hereby stipulated that the testimony of Francis G. Lefebre, a witness for libelant in this case and J. B. Morris and William P. Metzler, witnesses for claimant, may be taken at this time before Commissioner Ira A. Campbell, in accordance with the stipulation entered into by and between the proctors for libelant and libelee on June 10, 1916, and in accordance with the order and commission to take testimony issued in pursuance of that stipulation by the Judge of the United States District Court for the Territory of Hawaii, dated June 13, 1906, and in accordance with the commission to take testimony issued by the clerk of said court on the 13th of June, 1913.

It is further agreed that owing to the fact that the Commissioner has already returned his commission as to depositions already taken, that these depositions may be considered as having been taken in pursuance of said order and commission and stipulation, and that the same may be returned by the commissioner as a part thereof.) [564]

Deposition of Francis G. Lefebre, for Libelant.

FRANCIS G. LEFEBRE, called for the libelant, sworn.

Mr. SMITH.—Q. What is your full name?

A. Francis G. Lefebre.

Q. Where do you live?

A. 162 Lengton Street, San Francisco.

Q. Were you employed on the steamship "Great Northern" in the early part of the year 1916?

A. Yes.

Q. In what capacity?

A. I was a waiter, and afterwards I was chief engineer's steward; that means, to take care of the chief engineer's room, and I had a few rooms to take care of, too.

Q. When did you go to work on the steamship "Great Northern"? A. On October 1, 1915.

Q. How long did you work?

A. I left there on April 21, 1916.

Q. During all of that time were you employed on the ship?

A. Except on one trip, which was at the end of December, 1915.

Q. Were you on the steamship "Great Northern" on the trip made from San Francisco to Honolulu, leaving San Francisco about February 14, and arriving in Honolulu about February 21? A. Yes.

Q. At that time what were your duties on the ship, on that voyage?

A. I was the chief engineer's steward.

Q. What was the chief engineer's name?

(Deposition of Francis G. Lefebre.)

A. G. D. Morris.

Q. Did you see Mr. Hutchins, the libelant in this case, on that trip?

A. I was working on the table, on the chief engineer's table, and Mr. Hutchins was one of his guests.

Q. Did Mr. Hutchins eat at the chief engineer's table on the entire voyage? A. Yes.

Q. And you waited upon him, did you? A. Yes.

Q. Among other guests?

A. I could not tell you how many. I also waited on Mr. Doyle; I think he was a real estate man in Honolulu.

Q. Do you remember the time that Mr. Hutchins had an accident and hurt his arm in one of the shower-rooms on the steamship "Great Northern"? A. Yes. [565]

Q. How do you remember that occasion?

A. Well, one morning Mr. Hutchins did not come down for breakfast, and his wife came down, and I asked, of course, why Mr. Hutchins did not come down, so she said he had an accident. The next day he came down for lunch in the dining-room, and he had his arm in bandages, and so I asked him what was the matter.

Mr. CAREY.—I do not think the witness can testify to what Mr. Hutchins told him.

Mr. SMITH.—We do not ask that he should.

Q. Do you remember about what time this was?

A. I think it was along about the 18th of February.

Q. 1916? A. Yes.

Q. You got into Honolulu about what date on that

(Deposition of Francis G. Lefebre.)

trip? A. On the 23d of February.

Q. When did you next see Mr. Hutchins?

A. Well, I saw him the next time when he came down on the boat, when the Shriners went down to Honolulu; I saw him the day before sailing.

Q. You saw him where?

A. He came down on the ship.

Q. But where was this? A. In Honolulu.

Q. About what time was this, about what date?

A. Well, it was the big time, you know the time the Shriners went down to Honolulu.

Q. How long after the other trip that you made when you met Mr. Hutchins; how many trips?

A. Mr. Hutchins went down to Honolulu on the "Great Northern," leaving San Francisco on the 16th, I believe, and then it was two trips afterwards; it should be at the end of March.

Q. 1916? A. Yes.

Q. You said Mr. Hutchins came aboard the steamship "Great Northern"? A. Yes.

Q. What did you and Mr. Hutchins do, if anything? [566]

A. Mr. Hutchins knew me already; he asked me to show him around the shower-bath; like every boy working on a ship, I had a pass-key, so I opened this door and him and I went inside the shower-bath, and then he asked me—

Q. (Int.) What shower-bath did you go to see?

A. It was on the C deck.

Q. Of the steamship "Great Northern"?

A. Yes; he asked me to see for myself that there

(Deposition of Francis G. Lefebvre.)

was no handle on the wall.

Q. On the wall of what?

A. On the wall of the shower-bath, you know, a big, square thing—on the wall against one side of the shower-bath there should be—I don't know whether there should be, but he says there should be a handle; that means that when the ship rolls you can hold yourself on it.

Q. Did you look at the shower-bath on deck C of the "Great Northern" at that time in the presence of Mr. Hutchins? A. I did, yes.

Q. Was there a handle on the back wall of the shower-bath? A. No, there was not.

Q. Did you have any conversation with Mr. Morris about this? A. Yes.

Q. What was said?

Mr. CAREY.—I object to the conversation on the ground it is incompetent.

Mr. SMITH.—You may state what the conversation was.

A. I went to the chief engineer's room and I told him—

Mr. CAREY.—Just when was this?

A. That was the same day that Mr. Hutchins came down to the boat, and right after that—

Mr. SMITH.—Q. The same day you looked at the shower-bath?

A. Yes; and right after that I went in the chief engineer's room and I told him that Mr. Hutchins came down, and he asked me what [567] for; "Well," I said, "he wants to see the shower-bath, to

(Deposition of Francis G. Lefebvre.)

see for himself that there was no handle"; so Mr. Morris said, "There must be one," I said, "Mr. Morris, Mr. Hutchins and I just looked and we did not see any"; so Mr. Morris said, "There must be one." I says, "If you don't believe me, come and see," and so he went to see in the shower-bath.

Q. Did you and Mr. Hutchins go back with him?

A. No; I showed him myself.

Q. You said to him what?

A. I showed him myself; I went inside the shower-bath, and I said,—I showed him that there was none.

Mr. CAREY.—Q. Who went with you?

A. The chief engineer came with me.

Q. Mr. Morris? A. Yes.

Q. Who else? A. Nobody else.

Mr. SMITH.—Q. What did Mr. Morris say, if anything? A. There should be one.

Q. Was there any mat on the floor?

A. No, no mat.

Cross-examination.

Mr. CAREY.—Q. What are you doing now?

A. I am working in the Oakland Hotel.

Q. What kind of work? A. I am a waiter.

Q. How long have you been working there?

A. I started last Saturday.

Q. Where were you working before that?

A. I was working down in Del Monte.

Q. When did you start working at Del Monte?

A. I started working in Del Monte the 10th of June, 1916.

Q. How long did you work there?

(Deposition of Francis G. Lefebvre.)

A. I worked there until the 1st of October, 1916.

Q. What place? A. Hotel Del Monte. [568]

Q. What were you doing there?

A. I was a waiter.

Q. What did you do from October 1, 1916, till last Saturday, when you went to work at the Hotel Oakland? A. I was not doing anything.

Q. Where were you during that time?

A. I was nowhere; I was just taking a rest in Frisco.

Q. What were you doing from the time you left the steamship "Great Northern" in the winter of 1916, until the 10th of June, 1916?

Mr. SMITH.—He did not leave the "Great Northern" in the winter of 1916. He gave the exact date.

Mr. CAREY.—Q. When did you leave the steamship "Great Northern"? A. On April 21, 1916.

Q. What did you do after you left?

A. After I left I went down to Los Angeles for a few days, and I came back and I worked a few days at the St. Francis Hotel, and besides this I went to Del Monte for four days, which was at the end of May, and I went back on the 10th of June.

Q. Let us see: Between April 21, 1916, and June 10, 1916, you worked a few days, you say, at the St. Francis Hotel? A. Yes.

Q. And a few days at Del Monte Hotel?

A. Yes.

Q. How many days, altogether, did you work?

A. Well, maybe about five days; I tell you the last days, the time I worked in San Francisco, before the

(Deposition of Francis G. Lefebvre.)

10th of June, because I left San Francisco to go to Del Monte—before that time it was around the end of May I was working. Where did I tell you before I was working five days?

Q. Don't you remember?

A. I told you the Oakland Hotel. I mean San Francisco and Del Monte; that is right, before I went to Del Monte for five days I was working.

Q. You are sure of that, are you?

A. I am sure. [569]

Q. Who hired you there?

A. Mr. John Guillard.

Q. Have you got that down in your book?

A. No, I have not got that down.

Q. You are using a memorandum-book here to note the days when you were working for the steamship "Great Northern." What is that black book?

A. It is my union book. What I am showing you is my discharge from the "Great Northern."

Q. After you left the steamship "Great Northern" on April 21, 1916, you had no steady employment until June 10, when you went to work regularly at the Del Monte Hotel; is that it? A. That is it.

Q. And you worked there until October, 1916?

A. Until October, 1916.

Q. And then you did not do any other work until when?

A. I did not do anything at all until last Saturday.

Q. How long were you out of employment at that time?

A. About twelve or fourteen days, I believe.

(Deposition of Francis G. Lefebvre.)

Q. Now, did you ever work on any steamship before you were on the "Great Northern"? A. Yes.

Q. What steamship?

A. I came over from New York last year, in September, 1915, on the steamer "Kroonland."

Q. How did you get to San Francisco?

A. She got there; she came over there.

Q. You came on her to San Francisco? A. Yes.

Q. When did you get here?

A. I got here in the middle part of September.

Q. 1915?

A. Yes; and I got that job on the "Great Northern" three days after that.

Q. When did you tell Mr. Hutchins about this?

A. About what?

Q. About what you are going to testify in this case?

A. I met Mr. Hutchins at the corner of Powell and Market once when I was off; once when I was off at that time, I was with a friend [570] of mine, and Mr. Hutchins stopped me and asked me where I was living, that he would like to see me; he asked my address and I went to see him afterwards; then he told me that he would like me to testify in this case.

Q. When was that?

A. I was still working on the "Great Northern" because I came back—I think I was working on the "Great Northern" I could not tell you, but I think so.

Q. Did you tell Mr. Morris about that?

(Deposition of Francis G. Lefebvre.)

A. I did not; but I told Mr. Morris—Mr. Morris did not know anything at all until yesterday; Mr. Morris has always been very nice to me, and once I said I was very sorry to go against him, because he was a builder of two ships, and I did not feel like going against him, but yesterday I phoned him and I told him that I was going to testify in Mr. Hutchins' case. "Well," he said, "It is up to you, but I hope you will only tell the truth." I says, "Certainly, Mr. Morris, I will tell the truth." He said to me, "You know very well the handles were there four months before the accident happened." I said, "Mr. Morris, I give you my word that the handles were not there, for Mr. Hutchins and I went in the shower-bath and looked for them."

Q. You are a native of what country?

A. France.

Q. How old are you? A. I am 22.

Q. Were you a waiter in your own country before you came here? A. No.

Q. Was your first work of that kind on the "Kroonland"?

A. No; I will tell you, I started to work in a hotel in England.

Q. When was that?

A. It was five or six years ago.

Q. Five or six years ago, when you were quite a boy?

A. Yes; I left my home and I went to England, and ever since that I have been traveling all over the world.

(Deposition of Francis G. Lefebvre.)

Q. Are you a married man? A. Yes. [571]

Q. Do you live with your family?

A. No, I live with my wife and mother.

Q. Where do they live?

A. 162 Lengton Street.

Q. Did they come out with you at the same time from France? A. No; my wife is an American.

Q. Married since you came to San Francisco?

A. Yes.

Q. When did your mother come?

A. My mother isn't here.

Q. I thought you said you lived with your wife and mother? A. My wife and her mother.

Q. When were you married?

A. I was married on the 21st of January, 1916.

Q. That is when you were running on the "Great Northern"?

A. At the time I laid off; as I told you, I laid off one trip; that is the time I laid off.

Q. That is when you were married? A. Yes.

Q. Now, you have not had any steady work from April, during the spring, until in June, when you went to Del Monte?

A. I will tell you; I worked very hard for eight months on the "Great Northern," and of course in the summer I didn't work for nothing, so I took a rest; in April I got that job at Del Monte; that means I was to go to Del Monte the end of May, I mean in the middle part of May, but I did not go, because there was not much business over there, so, of course,

(Deposition of Francis G. Lefebvre.)

I didn't want to take any steady job, because I knew I was going to go there any day.

Q. 162 Lengton Street, San Francisco, is your correct address? A. Yes.

Q. Do you board or keep house?

A. We keep house.

Redirect Examination.

Mr. SMITH.—Q. What did Mr. Morris say, if anything, to you after you made the statement to him that you were coming here to-day [572] to give your deposition in the case of Hutchins vs. the "Great Northern"?

Mr. CAREY.—I object to the conversation as incompetent.

A. I phoned to him; he said, "Well, Francis, I hope you will tell the truth." I said, "Certainly, Mr. Morris, I will tell the truth." "Well," he said, "You know very well the handles were there." And I says, "Mr. Morris, I give you my word that the handles were not there when Mr. Hutchins and I went in the bath-room, in the shower-bath." "Well," he said, "Francis, if you testify that way it might drive you to jail."

Recross-examination.

Mr. CAREY.—Q. Is that all he said?

A. That is all he said.

Q. A while ago you testified that he said that you knew that these handles were there at least four months before the accident happened? A. Yes.

Q. Did he say that? A. He said that.

(Deposition of Francis G. Lefebvre.)

Q. You didn't say that just now.

A. He said another thing I forgot to tell you; he said, "We have got depositions from the man who put the handles in there four months ago, before that thing happened."

Q. You did not say that either.

A. He said that to me.

Q. You did not say that a while ago when you were testifying.

A. Didn't I tell you he had the depositions from the man four months ago?

Q. No. What else have you forgotten about this conversation?

A. He said to me at last—he said, "Francis, it is up to you." He said, "If you go up in this case you may get yourself in trouble."

Q. You did not say that before, did you?

A. I forgot.

Q. What else did he say that you have forgotten and want to put in. Can you add anything else?

A. No. A friend of mine was working [573] as a bell boy over there—

Q. (Intg.) Never mind. I am asking you about what Mr. Morris said in this conversation. What else did Mr. Morris say? A. That is all.

Q. Did he say anything else? A. No.

Q. When did you talk with him?

A. Yesterday afternoon about the same time as now.

Q. Did you come from Del Monte to testify here?

A. Yes; Mr. Grant told me at first that I should be

(Deposition of Francis G. Lefebre.)

here on the 2d—was it on the 2d of October—on Monday, that is right, on the 2d of October—before I went to Del Monte, Mr. Hutchins told me that I should be here on the 2d of October, and before I left Del Monte Mr. Grant wrote to me that there was no use for me to be here at that time, because the gentleman couldn't be there until the 21st.

Q. When did you leave Del Monte to come up here?

A. I left Del Monte on Sunday, the 1st of October.

Q. What have you been doing from the first of October until to-day?

A. I have not been doing anything up to last Saturday; I took about ten days rest.

Q. Did you leave Del Monte to come up here on the 2d of October to testify in this case?

A. I did not, because Mr. Grant wrote to me that there was no use for me to be here.

Q. What day did you leave to come up here?

A. I left on Sunday, the 1st of October.

Q. You came to San Francisco, at that time?

A. Yes, at that time.

Q. And you have been waiting to testify *every* since, have you?

A. Yes, I was not working at all, because I knew it was for the 21st.

Q. You knew you would not be wanted to testify until the 21st?

A. Until the 21st, yes. [574]

Q. So you did not do any work in the meantime?

A. Yes, I did; I just told you I am working now.

(Deposition of Francis G. Lefebre.)

Q. Last Saturday, you went to work?

A. Yes.

Q. This is Saturday, that was a week ago you went to work? A. Yes.

Q. What did you do the two weeks before that in October?

A. I took a rest; I was working for 15 hours a day before, and I thought I could take a rest.

Q. When did you see Mr. Hutchins about that?

A. What do you mean, this time?

Q. Yes.

A. I saw him about two days after I came back from Del Monte.

Q. Is that the only time?

A. That is the only time; I went to see Mr. Grant—he told me to go and see Mr. Grant, and I went up to see him once, and he told me to be there on the morning of the 21st.

Mr. SMITH.—You mean Mr. Grant Smith when you say Grant? A. Yes. [575]

Monday, October 23, 1916.

Deposition of J. B. Morris, for Claimant (Recalled.)

J. B. MORRIS, recalled for the claimant.

Mr. CAREY.—Q. Do you know Francis G. Lefebre?

Mr. SMITH.—Before you examine this witness, I would like to ask if you recall him for some particular purpose.

(Deposition of J. B. Morris.)

Mr. CAREY.—Yes, on account of the testimony of Francis G. Lefebre.

Mr. SMITH.—In order to contradict statements made by Francis G. Lefebre?

Mr. CAREY.—Yes.

Mr. SMITH.—Do you mean statements brought out on direct examination or cross-examination?

Mr. CAREY.—Both.

Q. Do you know Francis G. Lefebre?

A. Yes.

Q. Do you remember having a conversation with him about the end of March, 1916, on board the steamship "Great Northern," when she was in the port of Honolulu, with relation to the shower-bath that had been used by the libelant, Mr. Hutchins?

A. No.

Q. Do you recall having gone with Mr. Lefebre to look at that shower-bath on any occasion?

A. No.

Q. As a witness, he testified that you accompanied him to the shower-bath in question and he pointed out to you the fact that there was no handle on the wall of the shower at that time. What is the fact as to that?

A. None, whatever; I do not remember any trip of that kind.

Q. Did you at that time, or any other time, say to him there should be a handle?

A. No, not that I remember.

Q. What is the fact as to whether or not there was a handle in the [576] shower-bath at the time Mr.

(Deposition of J. B. Morris.)

Hutchins used the shower-bath?

A. There was a handle in the shower-bath at that time.

Q. On the subsequent voyages of the "Great Northern," what is the fact as to whether or not there was a handle in that shower-bath?

A. There was a handle in that shower before the accident occurred.

Q. Mr. Lefebre testified as follows: "Yes, and right after that I went in the chief engineer's room and I told him that Mr. Hutchins came down and he asked me what for. 'Well,' I said, 'He wants to see the shower-bath, to see for himself that there was no handle;' So Mr. Morris, said, 'There must be one.' I said, 'Mr. Morris, Mr. Hutchins and I just looked, and we did not see any.' So Mr. Morris said, 'There must be one.' I says, 'If you don't believe me, come and see,' and so he went to see in the shower-bath." What is the fact about that?

A. Well, I do not see any fact at all; I think it is just a falsehood.

Q. Now, did he at that time or any time show you the shower-bath? A. No.

Q. He testified, "I showed him myself; I went inside the shower-bath and I said—I showed him that there was none." What have you to say about that?

A. Well, all I can say is it must be a falsehood; I know absolutely nothing about it.

Q. Now, did the witness Lefebre call you by phone a few days ago prior to the time he testified in this case?

(Deposition of J. B. Morris.)

A. Yes, he called me up, I think it was Saturday, Saturday afternoon.

Mr. SMITH.—Just ask your question; I want to have an opportunity to object.

Mr. CAREY.—Q. The witness Lefebre testified as follows:

“Q. Did you tell Mr. Morris about that? A. I did not; but I told Mr. Morris—Mr. Morris has always been very nice to me, [577] and once I said I was very sorry to go against him, because he was a builder of two ships, and I did not feel like going against him, but yesterday I phoned him and I told him that I was going to testify in Mr. Hutchins’ case. ‘Well,’ he said, ‘It is up to you, but I do hope you will only tell the truth.’ I says, ‘Certainly, Mr. Morris, I will tell the truth.’ He said to me, ‘You know very well the handles were there four months before the accident happened.’ I said, ‘Mr. Morris, I give you my word that the handles were not there, for Mr. Hutchins and I went in the shower-bath and looked for them.’” Did you have that conversation with Mr. Lefebre?

Mr. SMITH.—I object to the question on the ground that it is immaterial, irrelevant and incompetent, and particularly on the ground that counsel seeks to contradict the witness on testimony brought forth by himself on cross-examination which had not been developed on direct examination.

A. Not exactly that. Saturday the boy called me up, and, of course I did not know who it was that was talking until some time; he told me it was Francis.

(Deposition of J. B. Morris.)

So I said, "Francis who?" He said, "Francis that used to be your boy on the ship." And I got the impression from his conversation that—

Mr. SMITH.—I object to the witness testifying to any impressions.

Mr. CAREY.—State what he said.

A. He told me that Mr. Hutchins wanted him to testify that the handles were on the ship while he was my boy there.

Q. Were on the ship, did you say?

A. That they were not on the ship, rather; so, I says to him, I says, "Why, Francis, if you want to testify to anything like that"—I want to say that I got the impression from the conversation—

Mr. SMITH.—We object to the impression. [578]

A. (Continuing.) It was a telephone conversation, you know.

Mr. SMITH.—You may state just what occurred, and the Court will draw the inference as to the impression.

A. He was explaining to me the fact that he liked me very much—

Mr. SMITH.—The witness will please state exactly what Lefebvre said.

Mr. CAREY.—State as near as you can in his language what he said: Give us the conversation as you remember it.

A. He says, "Mr. Morris, you know I have always liked you very much, and I would not like to testify against you; but," he says, "Mr. Hutchins has been a very good friend of mine, and procured me the

(Deposition of J. B. Morris.)

position at the Del Monte Hotel.” And he says, “I don’t know whether I should testify or not.” I said, “Certainly you should not, because you will be telling an untruth,” I says, “Those handles were on the ship”—I did say four months, not having in mind just how exactly how long they had been there at that time; and I says, “If you would testify to anything like that you would certainly go to jail for it.” I also told him that if he did testify, to tell the truth, no matter who it hurt. Do you wish me to say anything more about it?

Mr. SMITH.—It is understood, is it, Judge Carey, that the objection I have made goes to all the testimony?

Mr. CAREY.—If you desire it so.

Mr. SMITH.—I wish that first objection that I made to go to all his testimony, that is, that it is immaterial, irrelevant and incompetent, and that you are seeking to contradict a witness concerning matters brought out by you on cross-examination.

Mr. CAREY.—Q. Did he say, “I give you my word that the handles were not there, for Mr. Hutchins and I went in the shower-bath and looked for them”?

A. No, I don’t remember anything of that kind at all. [579]

Mr. CAREY.—That is all.

Mr. SMITH.—No cross-examination.

Deposition of William Paul Metzler, for Claimant.

WILLIAM PAUL METZLER, called for the claimant, sworn.

Mr. CAREY.—Q. Do you know the libelant, Mr. Hutchins? A. I know him by sight, yes.

Q. Were you on the voyage to Honolulu at the time he was injured in a shower-bath?

A. I was.

Q. Do you recall the occasion, or did you know of it at that time? A. Yes, I recall it.

Q. Did you see Mr. Hutchins at that time?

A. I did.

Q. At that time did you have any position with the steamship company?

A. Yes, I was acting as special agent on the boat; that is, special officer.

Q. Will you state whether or not after you heard of this accident you examined the shower-bath that had been used by Mr. Hutchins? A. I did.

Q. What was the fact as to whether or not there was a grab handle in the back of that shower-bath at that time? A. There was handle.

Q. What examination did you make of the bath?

A. I tried the lever, that is, the combination lever operating the hot and cold water, and looked over the flooring, and noticed that there was a grab-iron on the back slab.

Q. What was the occasion of your examining the bath?

(Deposition of William Paul Metzler.)

A. When I heard of the accident I went in to examine it.

Q. Will you state whether that was within the duty of your position on the boat, to make such an examination?

A. Yes, partially, and the house doctor's also.
[580]

Cross-examination.

Mr. SMITH.—Q. Are you now working on the steamship "Great Northern"? A. Yes.

Q. What is your position? A. Special agent.

Q. Have you been on the boat continuously from the time Mr. Hutchins was hurt in February, 1916?

A. Yes, during that trip.

Q. Have you been on every trip with the boat?

A. With the exception of one during the winter; there was one trip that I was not on her.

Q. Were you in San Francisco when the boat came in here on the 31st of July, 1916? A. Yes.

Q. You knew at that time, did you, that the captain and chief engineer and other employees of the ship were giving their depositions here before Mr. Campbell?

A. No, I did not; I heard that Mr. Hutchins had started an action against the company; that was all I heard; that was through the newspapers.

Q. Didn't the captain or chief engineer, or someone of the officers on the ship, tell you that they were going to give their depositions when they arrived here on the 31st of July? A. No.

Q. Didn't you know that five or six or seven men

(Deposition of William Paul Metzler.)

of the boat were off duty for that purpose?

A. I did not.

Q. Where were you at that time?

A. That is hard to say, because my duties take me on the dock, through the boat; I might have been on the dock when they went ashore; you see, my duties compel me to watch the freight, the handling of it.

Q. Did you make any report of your examination of this shower on the steamship "Great Northern" along the 18th of February, 1916?

A. I made a verbal report of Mr. Relf; he questioned me about it; he questioned me about whether or not there were any handles on the showers. [581]

Q. What made you go and look to see if there were any handles on the day that Mr. Hutchins was hurt?

A. Well, I did not go particularly to notice whether there were any handles or not.

Q. Nobody had said anything about handles?

A. No; I went in to look over the shower, to see if there were any defects.

Q. How did you know that there were any handles there at that time?

A. I knew there was not a few trips before that.

Q. You knew there were not?

A. I knew there were not.

Q. How did you know that there were on that day?

A. I looked on the day that the accident happened.

Q. What called your attention to the accident—anybody speak to you about it?

A. No, that is a part of my duties, to investigate

(Deposition of William Paul Metzler.)

those things and make an inspection; that is, if there are any injuries to a passenger, I make an inspection of the machinery, or whatever it is.

Q. Was this investigation made the same day that Mr. Hutchins was hurt? A. The same day.

Q. Who did you say went with you?

A. There was no one went with me when I inspected the showers, but I conferred with the captain and also with the house physician; he had a regular accident form that he filled out.

Q. Did you make any report to the captain?

A. Just a verbal report; I did not talk to him about it.

Q. Did you make any written report to anybody?

A. I did some time after, on the request of the claims agent, Mr. Relf; I believe he sent me a letter and I answered it.

Q. What shower did you go to examine on the 18th of February, 1916?

A. I examined them on the C deck, and the B deck; I went over all the showers.

Q. How many showers did you go to see?

A. There were two on C deck and four on B deck.
[582]

Q. How many showers are there on the boat?

A. Well, there is a shower in each bachelor room, and four showers on B deck and two on C deck; I don't know how many bachelor rooms there are.

Q. What made you go and examine the showers on B deck that day?

A. There were some complaints about the hot

(Deposition of William Paul Metzler.)

water; they could not regulate them and I tried them.

Q. Have you anything to do with inspecting the plumbing; is that part of your duties?

A. Well, now—anything to the comfort of the passengers, looking over the ship, I usually recommend a remedy, or report if I see anything that is out of repair.

Q. Did you examine the showers on that day in the bachelor quarters?

A. No; I did not have any occasion to; I used one of the showers during that trip in a bachelor room.

Q. And you examined them on B deck. How many did you say on B deck you examined?

A. Four.

Q. How many on C deck? A. Two.

Q. Did you carefully observe whether or not there were handles on all of the shower-baths that you examined? A. I did.

Q. What made you make that observation?

A. I don't know; one thing I noticed, they did not have any soap-retainers; we did have but passengers had picked them up and carried them away, and this time I noticed we did not have any, and I made a particular note of it, that there were no soap-retainers.

Q. But you did take particular notice of the fact that there was a grab-iron on each shower?

A. I did.

Q. Nobody had said anything to you about the grab-handles, had they? A. No.

(Deposition of William Paul Metzler.)

Q. How long after the accident occurred before anybody said anything to you about these grab-handles?

A. It must have been some time that Mr. Relph spoke to me about it.

Q. Was he the first person that ever spoke to you about grab-irons?

A. He was in Portland, and I was riding the ship, and I made one [583] trip over to Portland, between the Honolulu trips, to get some clothing or something, and—he did not call me in—he happened to be talking about it and talking about the suit, that Mr. Hutchins had sued the company, something about it, and he said there were no rubber mats on the floor of the shower, or something of that kind.

Q. Were there any rubber mats there? A. No.

Q. In any of the showers? A. No.

Q. What else did Mr. Relph say?

A. That is about all that I can remember.

Q. Did he ask you if the grab-handles were there?

A. No; he understood there were grab-handles there.

Q. But did he ask you?

A. I don't remember as to that.

Q. Did you tell him whether or not there were any at that time?

A. I may have, but I don't remember.

Q. When was the first time that anybody spoke to you about the grab-handles, anybody in connection with the ship?

A. That is pretty hard to state; I might have

(Deposition of William Paul Metzler.)

spoken about that myself, mentioned it myself.

Q. When was the first time that you remember talking with any officer of the ship or of the company about the grab-handles?

A. The captain and I talked it over that day, the day of the accident.

Redirect Examination.

Mr. CAREY.—Q. Do you recall how long before the accident the grab-handles had been put on these shower-baths?

A. How long before this trip?

Q. Yes.

A. I think we made two round trips before this trip of the accident—that is, they were put on two round-trips before, as I remember it.

(A recess was here taken until three P. M.)

(Testimony closed.) [584]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of the stipulation hereunto annexed, on Saturday, October 21, 1916, and Monday, October 23, 1916, before me, Ira A. Campbell, designated as commissioner in the commission to take testimony, at my office in the Merchants' Exchange Building, 465 California Street, in the city and county of San Francisco, State of California, personally appeared Francis G. Lefebvre, a witness called on behalf of libelant in the cause entitled in the caption hereof, and J. B. Morris and William

Paul Metzler, witnesses called on behalf of claimant in the cause entitled in the caption hereof, and Grant H. Smith, Esq., appeared as proctor for the libelant, and Charles H. Carey, Esq., of the firm of Carey & Carey, appeared as proctor for the claimant, and the said witnesses being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by their depositions hereto annexed.

I further certify that said depositions were then and there taken down in shorthand notes by Edward W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties are reading over of the depositions to the witnesses and the signing thereof were expressly waived.

And I do further certify that I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the United States District Court for the District and Territory of Hawaii, at Honolulu, Territory of Hawaii, the court for which the same were taken.
[585]

And I do further certify that I am not of counsel nor attorney for either of the parties in said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand at my office aforesaid this 28th day of December, 1916.

(S.) IRA A. CAMPBELL,
Commissioner. [586]

American Steamship "Great Northern" et al. 621

Filed Mar. 29, '17, at 1 o'clock P. M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk.

In the District Court of the United States in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN"
et al.,

Libellee,

and

A. AHMAN,

Master and Claimant.

Deposition of C. W. Wiley, for Claimant. [587]

No. 147.

In the District Court of the United States in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, Apparel, Furniture, Boats and
Appurtenances, and Against All Persons

Having or Claiming to Have Any Interest
Therein and Against All Persons Lawfully
Intervening in Their Interests Therein,

Libellee,

and

A. AHMAN,

Master and Claimant.

Commission to Take Testimony of C. W. Wiley.

[588]

*In the District Court of the United States, in and for
the Territory and District of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, Apparel, Furniture, Boats and
Appurtenances, and Against All Persons
Having or Claiming to Have Any Interest
Therein and Against All Persons Lawfully
Intervening in Their Interests Therein,

Libellee,

and

A. AHMAN,

Master and Claimant.

United States of America,
Territory of Hawaii,—ss.

The President of the United States of America: To
any United States Commissioner in the City of
Seattle, State of Washington; to the Clerk of
Any Court of Record in said City of Seattle;
and/or to any Notary Public duly commissioned
and sworn and residing in said City of Seattle;
GREETING:

WHEREAS, in a certain suit now pending before
the above-entitled United States District Court, in
and for the Territory and District of Hawaii,
wherein Clinton James Hutchins is libellant, the
American Steamship "Great Northern," her tackle,
etc., [589] is libellee, and A. Ahman is claimant
of said vessel, all as above entitled, an order has been
made and entered by the Court directing that a com-
mission issue out of this court to take the deposition
of C. W. Wiley as a witness on behalf of the claim-
ant in said cause, and providing for the issuance of
such commission to any United States Commissioner
in the city of Seattle, State of Washington; to the
clerk of any court of record in said city of Seattle,
and/or to any notary public duly commissioned and
sworn and residing in said city of Seattle, as commis-
sioner to take the said deposition of said witness, as
therein contemplated;

NOW, THEREFORE, we request that in further-
ance of justice and in accordance with the terms
hereinafter set forth, you, or any of you herein em-
powered as such Commissioner, will proceed, as Com-

missioner hereunder, with all convenient speed and promptitude to appoint a time and place for the taking of such deposition at the earliest practicable date, giving notice thereof to said witness, (whose place of business is represented by the claimant to be in the offices of the Seattle Construction and Drydock Company, in said city of Seattle,) and take the testimony of said witness under oath, in answer to the written interrogatories, direct and cross, which are attached to and made part of this commission, and thereupon reduce the same to writing, and cause the same to be read and signed by said witness; and upon the completion thereof, to sign and attach thereto your certificate of such taking thereof, and forthwith return the said deposition so certified, under sealed cover by mail addressed to the clerk of the United States District Court for the District and Territory of Hawaii, at Honolulu, Hawaii, together with this commission and interrogatories and a statement of the costs incident to the taking of said deposition. [590]

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 24th day of February, Nineteen Hundred and Seventeen.

(S.) A. E. HARRIS,
Clerk, United States District Court, Territory of
Hawaii. [591]

*In the District Court of the United States, in and for
the Territory and District of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, etc.,

Libellee,

and

A. AHMAN,

Master and Claimant.

**Direct Interrogatories Proposed on Behalf of the
Claimant to be Propounded to the Witness,
C. W. Wiley, and Attached to the Commission
Herein to Take His Testimony.**

Direct Interrogatory No. 1.

Please state your full name, age, and place of residence.

Direct Interrogatory No. 2.

Have you ever been in the employ of the Great Northern Pacific Steamship Company, at Portland, Oregon?

Direct Interrogatory No. 3.

If your answer to Direct Interrogatory No. 2 has been given in the affirmative, please state the period

(Deposition of C. W. Wiley.)

of time during which you were in the service of that company, and in what capacity? [592]

Direct Interrogatory No. 3.

Please state your duties as such employee.

Direct Interrogatory No. 5.

Do you know Dr. R. J. McAdory?

Direct Interrogatory No. 6.

Was he in the employ of the Great Northern Pacific Steamship Company during the month of February, 1916?

Direct Interrogatory No. 7.

If your answer to Direct Interrogatory No. 6 has been given in the affirmative, please state further in what capacity he was so employed, and where.

Direct Interrogatory No. 8.

When was he so engaged and how long did he continue in such employment?

Direct Interrogatory No. 9.

Who, on behalf of the Steamship Company, engaged him for that work?

Direct Interrogatory No. 10.

Do you know of your own knowledge whether or not upon his engagement in that capacity any inquiry or investigation was made concerning his qualifications and competency as a physician and surgeon? (Answer yes or no.)

Direct Interrogatory No. 11.

If your answer to Direct Interrogatory No. 10 has been given in the affirmative, please state by whom such inquiry was made. [593]

Direct Interrogatory No. 12.

(Deposition of C. W. Wiley.)

If your answer to Direct Interrogatory No. 10 has been given in the affirmative, please state further and in detail what inquiry was so made, and what information was obtained therefrom.

Direct Interrogatory No. 13.

If you have testified that such an inquiry was made by yourself, please state whether or not, in consequence thereof, any matter or thing came to your knowledge or attention in any manner reflecting upon the qualifications or competency of Dr. McAdory as such physician or surgeon. If so, what?

Direct Interrogatory No. 14.

Please state whether or not, in consequence of such inquiry or in any other way any matter or thing came to your knowledge or attention which raised any doubt in your mind as to his qualifications or competency as such physician or surgeon? If so, what?

Direct Interrogatory No. 15.

Please state what was your own actual belief, at the time, as to the qualifications and competency of Dr. McAdory as a physician and surgeon.

Direct Interrogatory No. 16.

Did you then entertain any doubt or question in your mind as to his qualifications or competency as a physician or surgeon?

Direct Interrogatory No. 17.

Since the engagement of Dr. McAdory as such physician and surgeon (if he was so engaged) for the Steamship "Great Northern," and during his service in that capacity, has any matter or thing come

(Deposition of C. W. Wiley.)

to your knowledge or attention which has at any time raised any doubt or question in your mind as to the qualifications or [594] competency of Dr. McAdory as such physician or surgeon?

Direct Interrogatory No. 18.

Do you know of any complaint or objection made by anyone against Dr. McAdory as to his qualifications or competency or performance of his professional duty as a physician or surgeon prior to the complaint made against him by Clinton James Hutchins, the libellant in this case, as to his alleged neglect or incompetency? If so, please state the same.

Direct Interrogatory No. 19.

Do you know of any other matter or thing touching any of the matters under inquiry in the foregoing interrogatories which will more fully state or explain the same? If so, please state them. The foregoing direct interrogatories are submitted by

(S.) SMITH, WARREN & SUTTON,

Proctors for Claimant.

Received a copy of the foregoing direct interrogatories this 23d day of February, 1917.

(S.) GEO. A. DAVIS,

Proctor for Libellant.

The foregoing direct interrogatories are hereby approved and allowed.

(S.) HORACE W. VAUGHAN,
Judge of the United States District Court for the
District and Territory of Hawaii. [595]

*In the District Court of the United States, in and
for the District and Territory of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTH-
ERN," Her Tackle, etc.,

Libellee,

and

A. AHMAN,

Master and Claimant.

**Cross-Interrogatories Proposed on Behalf of the
Libellant to be Propounded to the Witness C. W.
Wiley, and Attached to the Commission Herein
to Take His Testimony.**

Cross-Interrogatory No. 1.

Do you know of your own knowledge what institutions of learning, Dr. R. J. McAdory attended?

Cross-Interrogatory No. 2.

State whether or not at the time Dr. R. J. McAdory was employed by the Great Northern Pacific Steamship Company you made any inquiry as to what institutions of learning said Doctor had attended, and the length of his attendance at the same.

Cross-Interrogatory No. 4.

If your answer to cross-interrogatory Number 2

(Deposition of C. W. Wiley.)

has been in the affirmative please name the institutions of learning attended by Dr. R. J. McAdory, together with the period of attendance at each.

Cross-Interrogatory No. 3.

If your answer to cross-interrogatory number 2 has been in the affirmative please state what degrees, if any, Dr. R. J. McAdory received from any institutions of learning he attended. [596]

Cross-Interrogatory No. 5.

State, if you can, the nature and extent of the practical experience of Dr. R. J. McAdory as a physician and surgeon prior to his employment by the Great Northern Pacific Steamship Company.

Cross-Interrogatory No. 6.

Has Dr. R. J. McAdory a license to practice medicine under the laws of any State of the United States of America, and if so, did he have such license at the time of his employment by the Great Northern Pacific Steamship Company?

Cross-Interrogatory No. 7.

Is it not a fact that at the time of his employment by the Great Northern Pacific Steamship Company Dr. R. J. McAdory was a person of little or no practical experience as a practicing physician and surgeon?

Cross-interrogatory No. 8.

Is it not a fact that at the time of his employment by the Great Northern Pacific Steamship Company Dr. R. J. McAdory was only a student of medicine and a person with little or no practical experience in the practice of his profession?

(Deposition of C. W. Wiley.)

Cross-Interrogatory No. 9.

What salary or reward was offered to Dr. R. J. McAdory in order to secure his services for and on behalf of the Great Northern Pacific Steamship Company, if any?

Cross-Interrogatory No. 10.

Is it not a fact that Dr. R. J. (S.) H. W. Y. McAdory has failed to make a professional success of the practice of his profession up to the time of his employment by the Great Northern Pacific Steamship Company and was at that time in need of funds?
[597]

The foregoing cross-interrogatories are submitted by

THOMPSON, MILVERTON & CATH-
CART and

(S.) GEO. A. DAVIS,

Proctors for Libellant.

Received a copy of the foregoing cross-interrogatories this 24th day of February, A. D. 1917.

(S.) SMITH, WARREN & SUTTON,

Proctors for Claimant.

The foregoing cross-interrogatories are hereby approved and allowed.

(S.) HORACE W. VAUGHAN,

Judge of the District Court of the United States in
and for the District and Territory of Hawaii.

[598]

*In the District Court of the United States in and for
the Territory and District of Hawaii.*

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Tackle, Apparel, Furniture, Boats and
Appurtenances and Against All Persons Hav-
ing or Claiming to have an Interest Therein
and Against All Persons Lawfully Interven-
ing in Their Interests Therein,

Libellee,

and

A. AHMAN,

Master and Claimant.

Deposition of C. W. Wiley.

BE IT REMEMBERED that, pursuant to the commission hereto attached, and on this 6th day of March, A. D. 1917, at the hour of four o'clock P. M. on said day, at the offices of the Seattle Construction & Dry Dock Company in the city of Seattle, County of King, State of Washington, U. S. A., before me, N. W. Bolster, a Notary Public in and for said state, duly commissioned to administer oaths, etc., personally appeared C. W. Wiley, the witness named in said commission, and said witness being

(Deposition of C. W. Wiley.)

by me first duly sworn, I did then and there propound to him the direct and cross-interrogatories attached to said commission, and he made answer thereto as follows: [599]

DIRECT INTERROGATORIES.

Direct Interrogatory No. 1.

Please state your full name, age and place of residence.

Answering direct interrogatory No. 1, the witness saith:

Clarence Webster Wiley, age 47, and place of residence, Seattle.

Direct Interrogatory No. 2.

Have you ever been in the employ of the Great Northern Pacific Steamship Company, at Portland, Oregon?

Answering direct interrogatory No. 2, the witness saith:

Yes, sir.

Direct Interrogatory No. 3.

If your answer to Direct Interrogatory No. 2 has been given in the affirmative, please state the period of time during which you were in the service of that company, and in what capacity.

Answering Direct Interrogatory No. 3, the witness saith:

From July 1st, 1915, until August 1st, 1916, as marine superintendent.

Direct Interrogatory No. 4.

Please state your duties as such employee.

(Deposition of C. W. Wiley.)

Answering Direct Interrogatory No. 4, the witness saith:

As marine superintendent I was in charge of the hiring and discharging of all the men connected with the actual operation of the steamships "Great Northern" and "Northern [600] Pacific."

Direct Interrogatory No. 5.

Do you know Dr. R. J. McAdory?

Answering Direct Interrogatory No. 5, the witness saith:

Yes, sir.

Direct Interrogatory No. 6.

Was he in the employ of the Great Northern Pacific Steamship Company during the month of February, 1916?

Answering Direct Interrogatory No. 6, the witness saith:

Yes, sir.

Direct Interrogatory No. 7.

If your answer to Direct Interrogatory No. 6 has been given in the affirmative, please state further in what capacity he was so employed, and where?

Answering Direct Interrogatory No. 7, the witness saith:

As doctor on board the Steamship "Great Northern."

Direct Interrogatory No. 8.

When was he so engaged and how long did he continue in such employment?

Answering Direct Interrogatory No. 8, the witness saith:

(Deposition of C. W. Wiley.)

He was engaged in October, 1915, and continued during the entire Honolulu season and until the ship was taken off the run, which I think was in the latter part of April or the first of May, 1916.

Direct Interrogatory No. 9.

Who, on behalf of the Steamship Company, engaged him [601] for that work?

Answering Direct Interrogatory No. 9, the witness saith:

I did.

Direct Interrogatory No. 10.

Do you know of your own knowledge whether or not upon his engagement in that capacity any inquiry or investigation was made concerning his qualifications and competency as a physician and surgeon? (Answer yes or no.)

Answering Direct Interrogatory No. 10, the witness saith:

Yes, sir.

Direct Interrogatory No. 11.

If your answer to Direct Interrogatory No. 10 has been given in the affirmative, please state by whom such inquiry was made?

Answering Direct Interrogatory No. 11, the witness saith:

By myself.

Direct Interrogatory No. 12.

If your answer to Direct Interrogatory No. 10 has been given in the affirmative, please state further and in detail what inquiry was so made, and what information was obtained therefrom.

(Deposition of C. W. Wiley.)

Answering Direct Interrogatory No. 12, the witness saith:

Dr. R. J. McAdory made a written application to me for the position, stating what ships he had been in. He mentioned the Toyo Kaisha Company, commonly [602] called the T. K. K. Company; also presented letters from the Palace Hotel and from the Medical Society of California and from Captain Anderson of the S. S. "Honolulu." Personally I was very well acquainted with C. W. Cook, the Pacific Coast manager of the American-Hawaiian Steamship Company, the owners of the S. S. "Honolulu," and I personally went to Mr. Cook's office and asked him about the record and services of Dr. McAdory while in their employ on the S. S. "Honolulu," and he gave me a very good recommendation of him, stating that his services had been entirely satisfactory. Mr. Cook has been connected with the American-Hawaiian Steamship Company as their Pacific Coast representative for a period of practically ten years to my knowledge. Mr. Black of the Bank of California in San Francisco, also came to me recommending Dr. McAdory, stating that he, Mr. Black, had been a passenger on the S. S. "Honolulu" on a trip from San Francisco to New York, and that he could recommend Dr. McAdory very highly as a ship's surgeon. He stated that Dr. McAdory had attended to himself and his folks and that he felt that the doctor was a very reliable and competent man. Both of these gentlemen being personal friends of mine, I took their recommendations to a

(Deposition of C. W. Wiley.)

much greater degree than one ordinarily accepts the usual recommendation. I also asked Dr. McAdory if he had a certificate permitting him to practice in California, or a license for California, and he answered in the affirmative.

I think the application referred to in this answer is in the files of the marine superintendent's office [603] at Pier No. 7, San Francisco, California.
Direct Interrogatory No. 13.

If you have testified that such an inquiry was made by yourself, please state whether or not, in consequence thereof, any matter or thing came to your knowledge or attention in any manner reflecting upon the qualifications or competency of Dr. McAdory as such physician or surgeon. If so, what?
Answering Direct Interrogatory No. 13, the witness saith:

No matter or thing ever came to my knowledge or attention in any manner reflecting upon the qualifications or competency of Dr. McAdory as physician or surgeon.

Direct Interrogatory No. 14.

Please state whether or not, in consequence of such inquiry or in any other way any matter or thing came to your knowledge or attention which raised any doubt in your mind as to his qualifications or competency as such physician or surgeon. If so, what?

Answering Direct Interrogatory No. 14, the witness saith:

I have answered this question already in my an-

(Deposition of C. W. Wiley.)

swer to the last preceding interrogatory.

Direct Interrogatory No. 15.

Please state what was your own actual belief, at the time, as to the qualifications and competency of Dr. McAdory as a physician and surgeon.

Answering Direct Interrogatory No. 15, the witness saith:

I considered him well qualified and fully competent to [604] serve as physician in the position mentioned.

Direct Interrogatory No. 16.

Did you then entertain any doubt or question in your mind as to his qualifications or competency as a physician or surgeon?

Answering Direct Interrogatory No. 16, the witness saith:

No, sir.

Direct Interrogatory No. 17.

Since the engagement of Dr. McAdory as such physician and surgeon (if he was so engaged) for the steamship "Great Northern," and during his service in that capacity, has any matter or thing come to your knowledge or attention which has at any time raised any doubt or question in your mind as to the qualifications or competency of Dr. McAdory as such physician or surgeon?

Answering Direct Interrogatory No. 17, the witness saith:

No, sir. As far as the Great Northern Steamship Company is concerned and my opinion as marine superintendent, his services were entirely satisfactory.

(Deposition of C. W. Wiley.)

Direct Interrogatory No. 18.

Do you know of any complaint or objection made by anyone against Dr. McAdory as to his qualifications or competency or performance of his professional duty as a physician or surgeon prior to the complaint made against him by Clinton James Hutchins, the libellant in this case, as to his alleged neglect or incompetency? If so, please state the same. [605]

Answering Direct Interrogatory No. 18, the witness saith:

I never had any complaint during the season regarding the doctor. The complaint of Clinton James Hutchins, the libellant here, did not come to my knowledge during that season, and has only just come to my knowledge now.

Direct Interrogatory No. 19.

Do you know of any other matter or thing touching any of the matters under inquiry in the foregoing interrogatories which will more fully state or explain the same? If so, please state them.

Answering Direct Interrogatory No. 19, the witness saith:

No, sir. I do not know of any other matter.

CROSS-INTERROGATORIES.

Cross-Interrogatory No. 1.

Do you know of your own knowledge what institutions of learning Dr. R. J. McAdory attended?

Answering Cross-Interrogatory No. 1, the witness saith:

No, sir, I do not at this time.

(Deposition of C. W. Wiley.)

Cross-Interrogatory No. 2.

State whether or not at the time Dr. R. J. McAdory was employed by the Great Northern Pacific Steamship Company you made any inquiry as to what institutions of learning said Doctor had attended, and the length of his attendance at the same.
[606]

Answering Cross-Interrogatory No. 2, the witness saith:

I do not remember making any; his application may have stated that information, but I do not remember.

Cross-Interrogatory No. 3.

If your answer to Cross-Interrogatory No. 2 has been in the affirmative, please name the institutions of learning attended by Dr. R. J. McAdory, together with the period of attendance at each.

Answering Cross-Interrogatory No. 3, the witness saith:

I have already answered this interrogatory in my answer to the last preceding interrogatory, which was in the negative.

Cross-Interrogatory No. 4.

If your answer to cross-interrogatory No. 2 has been in the affirmative, please state what degrees, if any, Dr. R. J. McAdory received from any institutions of learning he attended.

Answering Cross-Interrogatory No. 4, the witness saith:

I have answered this in my answer to the Cross-Interrogatory No. 2.

(Deposition of C. W. Wiley.)

Cross-Interrogatory No. 5.

State, if you can, the nature and extent of the practical experience of Dr. R. J. McAdory as a physician and surgeon prior to his employment by the Great Northern Pacific Steamship Company?

Answering Cross-Interrogatory No. 5, the witness saith:

I would say his employment by the American-Hawaiian [607] Steamship Company on board the S. S. "Honolulu" and his employment by the Toyo Kisen Kaisha Steamship Company was what I based my judgment on in hiring him for the position on the S. S. "Great Northern."

Cross-Interrogatory No. 6.

Has Dr. R. J. McAdory a license to practice medicine under the laws of any state of the United States of America, and if so, did he have such license at the time of his employment by the Great Northern Pacific Steamship Company?

Answering Cross-Interrogatory No. 6, the witness saith:

My understanding was that Dr. McAdory had a license to practice medicine under the laws of the State of California.

Cross-Interrogatory No. 7.

Is it not a fact that at the time of his employment by the Great Northern Pacific Steamship Company Dr. R. J. McAdory was a person of little or no practical experience as a practicing physician and surgeon?

(Deposition of C. W. Wiley.)

Answering Cross-Interrogatory No. 7, the witness saith:

Not to my knowledge.

Cross-Interrogatory No. 8.

Is it not a fact that at the time of his employment by the Great Northern Pacific Steamship Company Dr. R. J. McAdory was only a student of medicine and a person with little or no practical experience in the practice of his profession?

Answering Cross-Interrogatory No. 8, the witness saith: [608]

Not to my knowledge, but on the contrary I was informed that his services with the other companies mentioned had been entirely satisfactory.

Cross-Interrogatory No. 9.

What salary or reward was offered to Dr. R. J. McAdory in order to secure his services for and on behalf of the Great Northern Pacific Steamship Company, if any?

Answering Cross-Interrogatory No. 9, the witness saith:

He was signed on the ship's articles at seventy-five dollars per month, and at the end of the season I gave him a bonus, which, according to the best of my recollection, would make his salary equal to about one hundred dollars per month for his services.

Cross-Interrogatory No. 10.

Is it not a fact that Dr. R. J. McAdory had failed to make a professional success of the practice of his profession up to the time of his employment by the

Great Northern Pacific Steamship Company and was at that time in need of funds?

Answering Cross-Interrogatory No. 10, the witness saith:

It is not a fact that Dr. McAdory had failed to make a professional success, so far as I knew. At the time of his employment he did not appear to be in need of funds.

(S.) C. W. WILEY. [609]

State of Washington,
County of King,—ss.

This is to certify that the foregoing deposition of the witness C. W. Wiley was taken before me pursuant to the commission hereto annexed, on the 6th day of March, A. D. 1917, at the offices of the Seattle Construction & Dry Dock Company, in the city of Seattle, County of King, State of Washington; that said witness, before testifying, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that the direct and cross-interrogatories attached to said commission to be propounded to said witness, were by me propounded to said witness and the answers of said witness to said interrogatories were by me written down and when the same was completed said deposition was read over by the

said witness and being by him approved was then and there signed in my presence, by said witness.

(S.) N. W. B.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 6th day of March, A. D. 1917.

(S.) N. W. BOLSTER,
Notary Public in and for the State of Washington,
Residing at Seattle.

Commissioner's fees, \$17.50.

Paid by libellee and claimant.

(S) N. W. BOLSTER,
Commissioner. [610]

**Proceedings at Decision and Notice of Appeal by
Libellant to Ninth Circuit Court of Appeals.**

From the Minutes of the United States District
Court, Vol. 10, page 409, Tuesday, April 3, 1917.

(Title of Court and Cause.)

On this day came Mr. Charles S. Davis on behalf of Mr. George A. Davis, proctors for the libellant herein, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Whitney, proctors for the above libellee, and this cause was called for decision. Thereupon the Court announced its decision in favor of the libellee and to which decision Mr. Davis entered an exception and gave notice of appeal to the Ninth Circuit Court of Appeals. Thereafter it was by the Court ordered that said decision be filed. [611]

Filed April 3, 1917, at — o'clock and — minutes — M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk.

*In the United States District Court for the Territory
of Hawaii.*

IN ADMIRALTY—IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
etc.,

Libellee.

**Opinion of the Court on the Issues of Law and Fact
in the Case.**

The libellant was a first-class passenger on board the steamship "Great Northern," leaving San Francisco on or about the 14th day of February, 1916, for a voyage to Honolulu and return. He alleges in his libel that he suffered injuries while he was such passenger, caused by the negligence of the vessel; and he seeks to recover damages on account thereof. The issues will be stated as they are made by the libel and the answer. The libel alleges:

"That it then and there became and was the duty due and owing from the said steamship 'Great Northern,' its owners and officers, to provide this libellant with a safe passage, as above set forth, and to provide on said steamship 'Great Northern' safe and proper appliances and equipment so that libellant could make said passage and voyage in safety and without harm or injury to himself; that in consideration of

the money paid for such first-class passage, and by reason of the agreement under which the said libellant embarked as passenger on board said steamship 'Great Northern,' the said libellant was to be furnished with a safe and proper place for [612] bathing, and it then and there became and was the duty of the libellee, its owners and officers, to furnish and provide for the use of the libellant a safe and proper bath-room, with safe and proper equipment and appliances for the bath.

That in violation of the agreements and duties above set forth, and with a reckless disregard of the rights of this libellant, and negligently and carelessly the said bath-rooms on the said steamship 'Great Northern' were so negligently constructed that they were dangerous and were unsuitable for the purpose of bathing; that more especially the rooms fitted up as and for shower-baths on the said steamship 'Great Northern' were carelessly and negligently constructed so that the same were dangerous and unsuitable for the purposes of taking a shower-bath therein; that the base or bottom of said shower-baths was a porcelain bowl about two feet or so square, with sides from three to four inches high, with a slight depression in the center, and a slope thereto from all directions to the drain in the center of the bowl; that the sides of said shower-baths were constructed of marble slabs, with service pipes for both hot and cold water running up the side of one of said mar-

ble slabs; that in order to reach and enter the bath, it was necessary to step over the top of the rim of the bowl; that by reason of said construction, the bowl was slippery and difficult to stand upon and in; that there was no provision made by means of rails or otherwise for grasping or holding on in case of slipping, nor was there any provision made by rubber mats, or otherwise, to prevent slipping and falling in said baths; that at all times, and especially when wet the said bowls became slippery and dangerous, and the equipment and lack of equipment, as aforesaid, were such as to cause a person entering therein to fall; that the construction and equipment and lack of equipment, as above set forth, made and rendered the said shower-baths unsafe and dangerous, and the construction and equipment, and lack of equipment, as above set forth, was negligent and careless as was to said libellee, its owners and officers, then and there well known. But that notwithstanding such negligent and faulty construction, equipment and lack of equipment, and notwithstanding the dangerous character thereof, the said baths were held out and made known to all passengers, and more especially to this libellant as proper and safe baths, both in construction and equipment.

That on the morning of the 18th day of February, 1916, while on board the libellee, the Steamship 'Great Northern,' on the voyage from San Francisco to Honolulu, as aforesaid, and between the ports of San Pedro and Hilo,

in the Territory and District of Hawaii, this libellant relying on the representation and agreement aforesaid that the said shower-bath rooms were safe and usable, entered one of the said shower-baths for the purpose of taking a shower-bath therein; that for such purpose, he had been duly called by the bath steward in charge of said shower-bath and just as this libellant entered the shower-bath room, the said steward turned the water on therein; that without any fault or negligence on the part of this libellant, as he stepped up over the rim of the porcelain bowl aforesaid, and as soon as his feet were on the porcelain bowl, by reason of the slipperiness of the [613] same, and by reason of the faulty construction, as above set forth, and because of the negligent and careless construction thereof, this libellant slipped and fell; that by reason of the faulty, negligent and improper construction thereof, there was nothing in said bathroom by which the libellant could save himself from falling by grasping or taking hold of any rail or other holding place; that this libellant was thrown heavily on his left side, and his left hand struck in the bowl of the bath opposite to the one he had entered, and the construction of which was of the same kind, and his hand slipping on the slippery porcelain bowl, and the weight of his body coming on his arm, the left shoulder joint of libellant was fractured and this libellant sustained severe injuries and bruises and a severe shock to his nervous sys-

tem. And this libellant so fell and so received such injuries and bruises and shock, by and through the carelessness and negligence of the libellee, its owners and officers, and without fault or negligence on his part.

The claimant, the Master, answering for his vessel says:

"The claimant admits the allegations of Paragraph 2 of said libel; and, with respect thereto, further alleges that the said steamship 'Great Northern,' its owners and officers, did in fact accordingly furnish and provide the libellant with all suitable, requisite, safe, and proper appliances, conditions, facilities, and service for a safe passage on said vessel without harm or injury to himself, including a safe and proper place for bathing and safe and proper bathrooms, equipment and appliances of the bath.

Answering the allegations of Paragraph 3 of said libel, this claimant denies that the bathrooms or any of them on said vessel were negligently constructed or were dangerous or unsuitable for the purposes of bathing; and more especially denies that the rooms or any of them fitted up as and for shower-baths on said vessel were carelessly or negligently constructed or were dangerous or unsuitable for the purpose of taking a shower-bath therein; and further denies that the construction thereof was faulty, improper, unsafe or dangerous.

And this claimant further denies that said floor bowls were in any respect more slippery to

stand upon or in than any porcelain floor or other clean and sanitary bath fixture; and denies that there was no provision by means of rails or otherwise for grasping or holding on in case of slipping.

Answering the allegations of Paragraph 4 of said libel, this claimant has no knowledge except by information from others, but basing his answer thereto upon his information and belief and, while admitting that the libellant, while using or attempting to use the shower-room or compartment on the port side in the bath-room on 'C' deck of said vessel, lost his balance and fell and sustained some bruises or injury, the exact nature and extent of which are to this claimant unknown, yet this claimant denies that said accident occurred or injuries were sustained [614] by reason of any negligent, careless or faulty construction of the said bath or shower room or accommodations, but were in fact the result of failure of the libellant to exercise common care in view of the motion of said vessel while so travelling on the high seas."

Further answering said libel this claimant alleges as follows:

"(1) That the steamship 'Great Northern,' whereon the libellant engaged and had passage from San Francisco to Honolulu, upon the voyage described in the libel herein, was at all of the times mentioned in said libel provided with numerous bath-rooms, some fitted with porcelain tubs and others with showers, and all of the

latest, modern, and most commodious and practical design and equipment.

(2) That it was at all times optional with the libellant whether or not he would use a shower-bath, or a tub bath, or any bath at all, on said voyage.

(3) That at all of the times mentioned in said libel the shower-bath referred to in the said libel as that in which or in connection with which the libellant is alleged to have been injured was and is a room approximately thirty inches square, having its walls made of upright marble slabs, open in front and having a pipe overhead and across the front as a curtain rod or support carrying sliding rings for front curtain; that the floor thereof was formed by a porcelain basin of the most approved and modern material and type, measuring approximately twenty-four inches square, practically level having no more slope than was and is necessary for proper drainage, and having sides about six inches above the level of the outside floor. That the said basin or floor was not difficult to stand in or upon, nor was the said bathroom or its equipment in any respect unsafe or dangerous, or carelessly or negligently constructed, or likely in any manner to cause a person using the same to slip or fall.

(4) That the said shower-bath room was and is provided with a metal handle plainly visible and firmly fixed on the back wall at a convenient height for any person to reach, for instant use

if desired; besides which there were a number of other convenient and immediately accessible means of support in and about the said shower bathroom; all of which were plainly visible and conveniently available and useful for the purpose of being taken or used by any person using the said shower bathroom should occasion require or such use thereof seem desirable.

(5) That said floor or basin was made of porcelain which is the usual and approved material for such purpose, to insure cleanliness, and was clean and no more slippery than any other porcelain bath. [615]

(6) That the whole method of construction, the form, the materials used, and the facilities provided and available for holding, and the condition of said bath as to being slippery or otherwise, were all plainly visible to the libellant.

(7) That the said shower-bath room was well lighted by electric light.

(8) That the placing of rubber mats or other floor covering in the basin or floor of the shower-bath rooms was and is not necessary, efficient or of value in rendering the floor any more safe to stand in or upon consistently with proper cleanliness and practical use thereof; and that the said bath-room was proper and safe both in construction and equipment.

(9) That said accident occurred while the said vessel was traveling on the high seas, and if the libellant sustained any injury to himself by reason of having slipped or fallen while using

the said bath-room such injury was occasioned solely and only by the carelessness and negligence of the libellant in his use thereof and in not taking reasonable care or precaution to guard against the same under the conditions and motion of the said vessel at sea; and that the same occurred without any fault or negligence whatsoever on the part of the libellee, or its owners, or its officers or servants on board said vessel.

(10) That said alleged injury was not in any manner caused or contributed to by the style or method of construction or equipment of the said shower-bath room."

The issues made by these allegations and denials and counter allegations contained in the libel and the answer, may be shortly stated:

(1) Did the vessel use that high degree of care, required of it, to make it safe for libellant to take a shower-bath in the place it provided for that purpose?

(2) Did libellant fall and receive his injuries on account of the failure, if any, of the vessel to make adequate provision to prevent him from falling or to enable him to prevent himself from falling?

(3) What caused libellant to fall?

Let us examine the evidence and see what answer should be made to these questions from the evidence.

[616]

The libellant testified substantially as he alleged in the libel. The allegations of the libel make a substantial statement of his testimony. He testified

among other things, that he had one foot in the shower-bath room and started to put the other foot in, and as he put it on the bottom of the basin in which he was to stand to take the bath, both feet slipped from under him and he fell; that there was nothing for him to catch hold of to prevent falling; that there was no handle on the wall nor anything else about the place for him to catch to prevent falling; and that there was no mat or anything else on the bottom of the basin to prevent him from slipping, and that he slipped and fell on account of the condition of the bottom of the basin, being unprovided with anything to prevent slipping, and the condition of the place, being unprovided with anything for him to hold on to or to catch to prevent falling.

The evidence fails to show any neglect to take precautions to make the shower-bath room or place safe unless it can be said that there was no handle on the wall of the compartment and that this was negligence, or that the failure to provide a mat or other means on the bottom of the basin to prevent slipping, considering all circumstances and other provisions for safety, was negligence.

Was the handhold on the wall of the compartment? There is a sharp conflict in the evidence on that question. The libellant swears positively that there was no handhold there on February 18th, at the time he was injured by falling while entering the compartment. His testimony is corroborated on this point by the deposition of Francis Lefebvre, one of the stewards on the vessel and the testimony of H. E. Westcott. [617]

There is also the testimony of one or two other witnesses, to the effect that the handhold was not there, or that they did not see any handhold there. But the three mentioned are very positive that it was not there.

Against this there is the positive, affirmative testimony of A. Ahman, the Captain, and J. B. Morris, Chief Engineer, each of whom swears positively that the handhold was there. There is also the testimony of Charles Wall, Chief Officer, H. K. Relf, General Claims Agent, and Special Agent Metzler, and McAdory, the surgeon, and C. S. Mills, the Chief Steward, each of whom swears positively that the handhold was there at the time. W. J. Tomlin, the ship fitter, testified by deposition that he put the handles on the bath compartments—that he, himself, did the work—that he did it on the 24th and 25th days of January, 1916; he had been employed to do it by Muir & Symon, and that he had kept a record of the time he did it and turned in his time cards to his employers, made out and signed by himself, showing the dates, which enabled him to be certain about the dates, and they are attached as exhibits to this deposition and corroborate his statements.

J. B. Switser, foreman for Muir & Symon, swears positively that he ordered the handles to be made at the foundry and instructed Mr. Tomlin to drill the holes in the walls of the compartments for them and have everything ready to put them on, and that he superintended the work, and that the handles were put on the walls of the compartments during the month of January, and that he is positive that they

were put on prior to February 18th, the date when libellant was injured. [618]

Katie Schnieder, bookkeeper for Muir & Symon, kept the books in regard to the business transactions growing out of the order given Muir & Symon by the "Great Northern" to put the handles on the walls of the bath compartments and the doing of the work accordingly, and her deposition states facts which make it very certain that the handholds were put on prior to February 18th, the date when libellant was injured.

Samuel Symon, Manager of Muir & Symon, testified by deposition, and his testimony shows very conclusively that the handholds were put on as testified to by the other witnesses whose testimony has been referred to. The Chief Steward, C. S. Mills, testified and produced the original requisition for the work and the bill for the same approved by him before the sailing on January 25th, after he had examined the work and had found the handles on.

The libel was filed on April 4th, 1916, and the order was made to have photographs of the compartment in which the libellant was injured, made on the 1st of May, and they were taken the same day, and they show the handhold on the compartment.

Some passengers testifying by depositions do not remember whether the handhold was on the compartment at the time the libellant was injured or not. Others do remember and testify that the handhold was there.

Sam B. Stoy of San Francisco, Manager of the London & Lancashire Fire Insurance Company, and

of the London & Lancashire Indemnity Company, was a passenger on the same voyage; he testified by deposition, and he swears positively that the handhold was on the wall of the shower-bath compartment into which libellant was about to enter at the time he fell and was injured. [619]

In order to find that the handhold was not there, it is necessary not only to refuse to believe the positive, affirmative testimony of several disinterested, reputable witnesses, swearing positively that it was there, but also to believe that the agents of the vessel have induced other disinterested witnesses, those who supplied the handles, and the workmen who put them on, and the bookkeeper who kept the accounts, to falsify and to make false records of the dates of business transactions for the purpose of making a defense in this case. The evidence that the handhold was there at the time, is overwhelming.

It is a well-known rule of law that affirmative statements are entitled to more weight than negative, even when the makers of the statements are equally creditable, equally disinterested and equally certain and positive that their statements are true. A witness may swear positively that a handhold was not on the wall of a compartment at a certain time and think his statement is true, and yet it may be untrue; he may not have observed the handhold; but when a witness swears positively that a handhold was on a compartment at a certain time, that he saw it and knows it was there, if his statement is untrue, no such explanation of it can be made.

The testimony of some of the witnesses who have

testified that there was no handhold or hand-grab or handle, by whatever name it be called, on the wall of the shower-bath room, may be explained upon the ground that the fact that the handle was there escaped their observation, or they are under erroneous impression as to when it was they made their observations. [620]

But, however that may be, I find from the evidence that there was a handhold on the wall of the bathroom, at the time the libellant was about to take a bath, when he fell and was injured.

There was no mat of any kind on the bottom of the basin in which it was necessary to stand in order to take a shower-bath, nothing but the bottom of the basin itself; and it is contended by libellant that something less slippery should have been provided and placed over the bottom of the basin, a rubber mat or a structure of some kind placed over the bottom so that one could enter and use the place without incurring the danger of slipping and falling; and that it was negligence to fail to make such provision for the safety of those using said place.

There is a sharp conflict in the evidence as to whether the placing of a mat or anything else over the bottom of the basin would have added anything towards making it less slippery, or rendering it less likely that one using the place to take a bath would fall on account of the bottom being slippery. It is contended for the vessel that a mat or anything else placed over the bottom of the basin would have been as likely to slip thereon as the bare foot of a person

taking a bath, and would have added nothing to the safety of the place.

Chief Steward Hackett, of the S. S. "Sierra," testified that the shower-bath rooms of that vessel are like those of the "Great Northern" in every respect; but that for several years provision has been made to make those of the "Sierra" safe by fitting a structure made of wood, a kind of lattice work, over the bottoms of the basins in such manner [621] as to prevent the structure itself from slipping; and that this provision makes the bath-rooms much safer.

Was the failure to provide anything of the same kind negligence on the part of the "Great Northern"?

If it be conceded that providing something of the same kind over the bottoms of the basins, would have made them safer as regards danger from the slipperiness of the bottoms, it does not necessarily follow the vessel was negligent in not so providing.

The question whether the failure to make such provision was negligence depends upon what other provisions for safety had been made. If the other provisions for safety were such that any person, exercising ordinary care and using the means provided, was in no danger in using the place, it was not negligence to fail to provide a mat or other covering for the bottom of the basin.

The master of the vessel, Captain Ahman, and the Chief Engineer, J. B. Morris, testified that said vessel and the "Northern Pacific," with bath-rooms in all respects the same, had before libellant's injury carried thousands of passengers; and this was the

first instance in which it had ever come to their knowledge that any one had ever been injured in taking a shower-bath, or made any complaint about the lack of provision for safety for taking one. According to this it would appear that they were safe even before the handles were put on.

In view of the fact that the evidence shows that all any one needed to do to avoid slipping or falling, and to be entirely safe in entering the bath-room and taking a bath, was [622] to hold to the curtain over the entrance, or to the rod above the curtain, or to the outer edge of the wall at the entrance, or to the handle on the rear wall which could easily be reached from outside, I conclude that all the care required by law to avoid the danger of slipping and falling in using said place was exercised, and that it was not negligence not to provide a mat or covering for the bottom of the basin; nor am I unmindful that it was the duty of the owners of the vessel to exercise for the safety of passengers the utmost care of which human foresight is capable; they were not required to do more, and had the right to assume that those using the place would exercise ordinary care for their own safety and make use of those means for safety which were provided.

There is a sharp conflict in the evidence as to whether the libellant's fall which caused his injury, was caused by slipping on the floor of the bath-room or by there being no handhold on the wall, even if it were conceded that there was no handhold there. There was an eye-witness to the accident, whose deposition, if true, shows that the libellant fell before he

ever entered the bath-room, before he put either foot on the floor of the basin, and that his fall was caused by the rolling of the vessel, libellant losing his balance when he started to step into basin, one foot on the floor of the compartment outside the bath-room, the other raised for the purpose of stepping in. Dr. Barney R. Simons, of Philadelphia, testified by deposition, taken September 28th, 1916, that he was a passenger on the vessel at the time libellant was injured, and that he witnessed the accident, "was the only one present and the only one who saw the accident," that he desired to take a shower-bath himself and went to the place [623] for that purpose, and libellant was there when he got there, that libellant was standing outside of the bath-room and occupied practically the entire passageway between the one he was about to enter and the one on the opposite side of the passageway, and he (witness) sat down on a stool near by and observed libellant until such time as he might get out of the passageway so he (the witness) could enter the opposite shower, that libellant stood with his left hand against the wall and with his right hand was feeling the temperature of the water; "the vessel about this moment lurched, at the same time Mr. Hutchins endeavored to step into the shower, his right foot forward, resting his weight on his left, when his left foot slipped from under him and he fell with his left shoulder upon the edge of the opposite shower."

I have carefully examined the deposition of this witness and I find no reason to refuse to believe his statements. He appears to be disinterested, intelli-

gent and in every respect worthy of credence, and I think it would be contrary to common sense and the dictates of right and justice to refuse to believe him and to accept as true the statements of the libellant, who is interested, however respectable and worthy, which are so flatly contradicted by him.

I therefore find that libellant did not slip on the bottom of basin, that he fell because he lost his balance on account of the vessel lurching when he was about to step into the bath-room, and that his fall was not caused by any negligence of the vessel or its owners or servants.

Proctors for libellant strenuously insist that the answer of the claimant admits that libellant fell in the bath-room and that the admissions in the answer obviate the evidence given by Dr. Simons. I have carefully read the answer and I find no such admission. [624]

In support of the contention that the answer does make such admission, one of the proctors for libellant, in a typewritten argument which he was permitted by the Court to file after the argument in the case had been concluded, culls out from the sentence quoted below from the answer, the words therein which I have underscored, omitting all the remainder of the sentence.

“Answering the allegations of paragraph 4 of the libel, this claimant has no knowledge except by information from others, but basing his answer thereto upon his information and belief, and, while admitting that the libellant, while using or attempting to use the shower room or

compartment on the port side of the bath-room on 'C' deck of said vessel, lost his balance and fell and sustained some bruises or injury, the exact nature and extent of which are to this claimant unknown, yet this claimant denies that said accident occurred or injuries were sustained by any negligent, careless or faulty construction of said bath or shower room or accommodations, but were in fact the result of the failure of libellant to exercise common care in view of the motion of said vessel while so traveling on the high seas."

It is hardly necessary to say that neither the whole of the sentence, nor the part underscored makes any admission that libellant slipped upon the bottom of the basin or that libellant ever got into the basin.

There is no admission in the answer that obviates the facts testified to by Dr. Simons, which prove that libellant did not slip upon the bottom of the basin, but that he lost his balance and fell on account of the motion of the vessel when he started to step into the shower room and before he ever placed either foot on the floor or basin thereof.

On February 16th, 1917, libellant filed the following amendment to the libel, viz.: [625]

"4a. AND THE SAID LIBELLANT further alleges and charges that it became and was the bounden duty of the said steamship 'Great Northern,' its owners and the masters thereof to employ and keep employed and have on board of said steamship on said voyage hereinbefore set out in this libel a skilful and competent phy-

sician and surgeon and it became and was the bounden duty of said steamship, its owners and the master thereof under the marine contract so entered into between the libellant and the said steamship, its owners and master thereof to employ and keep employed on board of said steamship a competent and skilful physician and surgeon to attend to this libellant and to exercise medical care and surgical skill in healing and endeavoring to heal and cure him of the injuries so sustained by him as aforesaid on board of said steamship on the said 18th day of February, A. D. 1916, and at all other times during said voyage; and it became and was the bounden duty of the said steamship, its owners and the master thereof to exercise the highest degree of care and to endeavor to and use skill, care and render the best possible surgical and medical attention towards this libellant after he sustained the injuries as aforesaid in order to heal and cure him of his injuries and to continue to exercise the highest degree of care and skill towards the libellant after he received the said injuries during the rest of the voyage and until the arrival of said steamship "Great Northern" in the port of Honolulu; yet the said steamship, the master and its owners thereof not regarding their duty in that behalf and in violation of the marine contract so entered into as aforesaid and in violation of the duty and obligations arising under said marine contract, the said steamship, the master and owners thereof did not employ

and keep employed nor furnish this libellant with a competent physician but had an unskilful, incompetent physician on board said steamship who failed and neglected to give proper care and exercise proper medical skill and attention towards this libellant, which the said steamship, its owners and the master thereof well knew and neither the master nor the officers of said steamship nor said incompetent physician exercised proper care, skill and attention towards this libellant at any time during said voyage and after he had received the injuries so occasioned as aforesaid, the said incompetent physician so employed as aforesaid treated the injuries sustained by the libellant unskilfully, negligently and improperly and by reason of the incompetency of the said physician and surgeon so employed as aforesaid, the libellant suffered excruciating pain and torture after he sustained the said injuries as aforesaid and during the remainder of said voyage on said steamship by reason of the failure and neglect of the master and officers of said steamship towards him and because of the incompetency of said physician and surgeon so employed as aforesaid, the said physician and surgeon so employed as aforesaid did not make a proper examination of the broken shoulder-joint and injuries so sustained by this libellant nor did he use proper care and skill in attending to the same but treated it as a bruise and was guilty of gross negligence and the said steamship, the master and owners

thereof in violation of [626] said marine contract so entered into as aforesaid between this libellant, the said steamship and the owners and master thereof employed and kept employed said wholly incompetent physician during all of said voyage with full knowledge that said physician and surgeon was wholly incompetent and unskilful and said steamship, its owners and the master thereof failed and neglected to render such proper medical care and skill to this libellant as required by the terms of said marine contract so entered into as aforesaid and failed and neglected to call in the assistance and advice of other physicians and surgeons who were passengers on board of said steamship during said voyage and utterly failed and neglected to exercise the highest or any degree of care towards this libellant."

The claimant answered as follows, viz:

"This claimant denies that the surgeon on board the steamship 'Great Northern,' upon the voyage described in said libel and in said Paragraph 4a thereof, was incompetent, unskillful or negligent in his treatment and care of the Libellant; and denies that the said physician when engaged by the owners of said vessel was known to said owners or to the master thereof as being unskillful or incompetent; and denies that then or thereafter at any time up to the time of the injury of Libellant complained of the said owners or master knew of any incompetency of the said physician; and denies that

the said owner and/or master employed to keep the said physician employed, knowing or believing him to be incompetent or unskillful."

The injury not having been caused by any negligence of the vessel, or anyone for whose negligence it is liable, is it liable for such suffering and damages as were caused by the fact, if it be a fact, that that that vessel's surgeon failed to give proper surgical attention to libellant's injury?

Evidently the failure of the surgeon to do so did not cause the injury, and the evidence fails to show any injurious consequences of the failure of the surgeon to treat the injury as it should have been promptly treated, except the physical and mental suffering endured during the delay in recovery and delay in receiving treatment, for he did have proper surgical attention given to his injury on [627] arriving in Honolulu three days afterwards, and there is no evidence of any permanent injury caused by the delay in receiving treatment. He suffered a very serious, painful injury and still suffers to some extent therefrom; but the surgeon who treated him and who was a witness in his behalf testified that he has recovered almost entirely and neither he nor any other witness testifies to any injurious consequences of the fact that his injury was not properly treated until he arrived at Honolulu.

However that may be, is the vessel liable for such suffering as he endured and such damages as he sustained as were caused by the failure of the vessel's surgeon to properly treat his injury?

Regardless of the cause of his injury and of the

question of liability therefor, it was the duty of the vessel to exercise the care required by law to relieve the suffering of her injured passenger. But was it her duty to give proper surgical treatment to his injury, or to furnish a surgeon to do so? Is she liable for the neglect of the surgeon she had employed on board, being required thereto by section 5 of the Act of Congress of August 2, 1882 (U. S. Comp. Stats., vol. 7, p. 9822, sec. 8002) to treat the libellant's injury?

The evidence does not show that the surgeon did anything he should not have done, or that anything he did caused any injury or suffering. He simply administered codeine to alleviate libellant's suffering. He did not treat the injury at all, because, he says, he was not sure there was a fracture, and because, he says, the vessel would arrive in Honolulu in sufficient time to admit of deferring treatment until such arrival. That he should have at once properly treated the injury so as to permit a recovery to begin at once, is doubtless true. But he did not. Is the vessel liable for such damages as [628] resulted from his failure to do so?

Much stress has been laid upon the general duty of the carrier to provide for the safety, health and comfort of passengers, to which I heartily agree; but I cannot find any authority for holding that any rule of the law applied by Courts of Admiralty in such cases, or of the common law, requires carrier vessels to furnish an injured passenger with a surgeon to treat such an injury as that of the libellant. Does the act of Congress referred to require it? The part

of the section of the Act referred to, relied upon as imposing that duty, reads as follows, viz:

"And every steamship or other vessel carrying or bringing immigrants, passengers, or passengers other than cabin passengers, exceeding fifty in number, shall carry a duly qualified and competent surgeon or medical practitioner, who shall be rated as such in the ship's articles, and who shall be provided with surgical instruments, medical comforts, and medicines proper and necessary for diseases and accidents incident to sea voyages, and for the proper medical treatment of such passengers during the voyage, and with such articles of food and nourishment as may be proper and necessary for preserving the health of infants and young children; and the services of such surgeon or medical practitioner shall be promptly given in any case of sickness or disease, to any of the passengers or to any infant or young child of any such passengers, who may need his services." U. S. Comp. Stats., vol. 7, p. 8522, sec. 8002.

I do not find where the question whether this language makes a vessel liable to a passenger for such damages as he sustained on account of the failure or neglect of the surgeon to treat an injury to such passenger, has ever been before any court. In the case of *Leubheim v. Netherland S. S. Co.*, 107 N. Y. 228, 13 N. E. 781, the plaintiff, a passenger, slipped upon the deck and injured her knee, the surgeon employed by the defendant took charge of her and operated

upon the injured part, and the action was brought to recover damages alleged to have been caused [629] by the alleged improper and negligent treatment of the surgeon. No negligence on the part of the defendant in selecting the surgeon was shown, and the action was dismissed by the trial judge, and his judgment was affirmed by the Court of Appeals.

The Court said in an opinion concurred in by all the justices:

“It is not necessary in this case to determine whether at the date of the accident to the plaintiff, the steamship company owed a duty to its passengers to provide a surgeon for their care and safety in the emergency of sickness or accidents, or whether, having voluntarily assumed that duty, its position became identical with that of a carrier bound by law to furnish such an officer, since either proposition may be granted without involving error in the judgment rendered.

If by law or by choice the defendant was bound to provide a surgeon for its ship, its duty to the passenger was to select a reasonably competent man for that office, and it is liable only for neglect of that duty. It is responsible solely for its own negligence and not that of the surgeon employed. In performing such duty it is bound only to the exercise of reasonable care and diligence, and it is not compelled to select and employ the highest skill and longest experience.”

It does not appear, however, that the Act of August 2, 1882, was construed or alluded to by the Court in that case. In fact it appears that the injury was caused prior to the passage of that Act.

In the case of *O'Brien v. Cunard S. S. Co.*, 154 Mass. 272, 28 N. E. 266, the Supreme Court of Massachusetts, in an action for damages, alleged to have been caused by alleged negligence of the ship's surgeon in vaccinating the plaintiff, a passenger on one of the vessels of the defendant, said:

"Whether there was any evidence of negligence of the surgeon we need not inquire, for we are of opinion that the defendant is not liable for his want of care in performing surgical operations. The only ground on which it is argued that the defendant is liable for his negligence is that he is a servant engaged in the defendant's business, and subject to its control. We think this argument is founded on a mistaken construction of the duty imposed on the defendant by law." [630]

The Court then proceeded to quote section 5 of the Act of August 2, 1882, heretofore quoted in this opinion, and said:

"Under this statute it is the duty of the ship-owners to provide a competent surgeon, whom the passengers may employ, if they choose, in the business of healing their wounds, and curing their diseases. The law does not put the business of treating sick passengers into the charge of common carriers, and make them responsible

for the proper management of it. The work which the physician or surgeon does in such cases is under the control of the passengers themselves. It is their business, not the business of the carrier. They may employ the ship's surgeon or some other physician or surgeon who happens to be on board, or they may treat themselves if they are sick, or may go without treatment if they prefer; and, if they employ the surgeon they may determine how far they will submit themselves to his directions, and what of his medicines they will take and what reject, and whether they will submit to a surgical operation or take the risk of going without it. The master or owner of the ship cannot interfere in the treatment of the medical officer when he attends a passenger. He is not their servant, engaged in their business, and subject to their control as to his mode of treatment. They do their whole duty if they employ a duly qualified and competent surgeon and medical practitioner, and supply him with all necessary and proper instruments, medicines, and medical comforts, and have him in readiness for such passengers as choose to employ him. This is the whole requirement of the statute of the United States applicable to such cases; and if, by nature of their undertaking to transport passengers by sea, they are under a liability at the common law to make provision for their passengers in this respect, that liability is no greater. It is quite reasonable that the owners of a steamship used

in the transportation of passengers should be required by law to provide a competent person to whom sick passengers can apply for medical treatment, and when they have supplied such a person it would be unreasonable to hold them responsible for all the particulars of his treatment when he is engaged in the business of other persons, in regard to which they are powerless to interfere."

In the case of *Allan v. State S. S. Co.*, 152 N. Y. 91, 30 N. E. 482, the action was for damages alleged to have been caused by the ship's physician negligently giving plaintiff, a passenger on one of the defendant's vessels, a dose of calomel instead of quinine. The Court of Appeals in an opinion by Justice Brown, concurred in by all the Justices, said:

"The defendant was a common carrier of passengers, and we need not discuss whether the common law imposed upon it any duty to treat those who were sick, nor whether it made it [631] responsible for their proper care or management. The duty that it assumed in this respect in this case was imposed upon it by the statute of Great Britain, under the laws of which it was incorporated."

The Court then proceeded to quote from the statute of Great Britain, which it says is similar to section 5 of the Act of August 2, 1882, and says:

"When the ship-owner has employed a competent physician, duly qualified as required by the law, and has placed in his charge a supply of

medicine sufficient in quantity and quality for the purposes required, which meet the approval of the Government officials, and has furnished to the physician a proper place in which to keep them, we think it has performed its duty to its passengers; that from that time the responsible person is the physician, and errors and mistakes occurring in the use of the medicines are not chargeable to the ship owner; and that no different rule is applicable to such mistakes as are the result of improper arrangement in the care of the medicines than to those which are the result of errors in judgment. The work which the physician does after the vessel starts on the voyage is his, and not the ship owner's. It is optional entirely with the passengers whether or not they employ the physician. They may use his medicines or not, as they choose. They may place themselves under his care, or go without attendance, as they prefer, and they determine themselves how far and to what extent they will submit to his control and treatment. The captain of the ship cannot interfere. The physician is not the ship owner's servant, doing his work and subject to his directions. In his department, in the care and attendance of the sick passengers, he is independent of all superior authority except that of his patient, and the captain of the ship has no power to interfere, except at the passenger's request. These views find support in *Laubheim v. Steamship Co.*, 107 N. Y. 229, 13 N. E. Rep. 781, and in *O'Brien v.*

Steamship Co., (Mass.), 28 N. E. Rep. 266. The first case arose before Congress has legislated upon the subject, but it was said in the opinion that "If, by law or by choice, the defendant was bound to provide a surgeon for its ship, its duty to the passengers was to select a reasonably competent man for that office, and it is liable only for a neglect of that duty." The Massachusetts case was decided upon a statute of the United States similar to that of Great Britain, and it was there said that the shipowners "do their whole duty if they employ a duly qualified and competent surgeon and medical practitioner, and supply him with all necessary and proper instruments, medicine, and medical comforts, and have him in readiness for such passengers as choose to employ him." We think that is the extent of the requirement of the statute in this case, and, if there was any common-law liability resting upon the defendant to make provision for the care and attendance of its passengers when sick, it was no greater than that imposed by the statute." [632]

These opinions of course recognize that the statute imposes the duty to have on board a competent medical practitioner. Whether the vessel is liable for injuries caused by incompetency of the physician employed even though due caution was exercised in his selection and employment or is liable for damages caused by his incompetency only when it has failed to exercise due care in his selection and employment, it is unnecessary to decide in this case,

because there is no evidence to justify a finding that the surgeon was incompetent. That he did not treat libellant's injury as other physicians testify it should have been treated, I may say, as the evidence shows it should have been treated, does not prove he was incompetent. There is no evidence of any damages caused by incompetency. The vessel is not liable for the negligence of the surgeon or his failure to treat the injury, as there is no evidence of negligence in his selection and employment, and the evidence shows the exercise of due care in regard thereto.

It is therefore the opinion of the Court that libellant is not entitled to recover any damages of the vessel, and that judgment should be rendered accordingly.

(Sgd.) HORACE W. VAUGHAN,
Judge U. S. District Court. [633]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle,
Apparel, Boats, Furniture and Appurte-
nances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,

and

THE GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Owners Thereof,

Libellees.

Final Decree.

This cause having been heard on the pleadings and proofs and having been argued and submitted by the advocates of the respective parties and due deliberation having been had, and it appearing to the Court that the libellant has failed to prove and establish the material allegations set forth and contained in his libel and that in admiralty and justice he is not entitled to be granted the relief prayed for as set out and contained in the prayer of his libel, or to any relief or decree, and it further appearing that the libel filed in this suit should be dismissed with costs in accordance with the decision filed herein in this court on the 3d day of April, A. D. 1917, it is now ORDERED, ADJUDGED AND DECREED by this Court that the libel filed in this cause be dismissed with costs to be taxed against the libellant.

Done in open court in the courtroom of the United States District Court at the courtroom of said court in the Model Block, so-called, in the city and county of Honolulu, in the District of Hawaii, this 13th day of April, A. D. 1917.

(Sgd.) HORACE W. VAUGHAN,
Judge of the United States District Court. [634]

[Endorsed]: No. 147. (Title of Court and Cause.)
Decree, Entered in J. D., Book #3, at folio 46.
Filed April 11, 1917, at 2 o'clock P. M. A. E. Har-
ris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.
[635]

**Proceedings, Decree Approved and Ordered Entered,
Bond for Costs on Appeal Approved and
Amount of \$1,000.00 Ordered for Bond to Stay
Execution.**

From the Minutes of the United States District
Court, Vol. 10, page 419, Friday, April 13, 1917.

(Title of Court and Cause.)

On this day came Mr. George A. Davis, proctor for
the above-named libellant, and also came Mr. L. J.
Warren, of the firm of Smith, Warren & Whitney,
proctors for the libellee herein, and this cause was
called for hearing on Motion for Entry of Decree.
Thereupon and after due hearing, said motion was
granted and the Decree presented by Mr. Davis was
approved and signed and ordered filed and entered.
Thereafter Mr. Davis filed notice of appeal and the
bond for costs and to stay execution was presented,
and same having been approved as to form, the Court
ordered that together with the amount of \$250.00 to
cover the costs of appeal the further sum to stay
execution be \$1,000.00. [636]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle,
Apparel, Boats, Furniture and Appurte-
nances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,
and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Notice of Appeal.

To the American Steamship "Great Northern,"
Her Engines, etc., and to A. Ahman, Master,
Bailee and Claimant of the Said Steamship, and
to the Great Northern Pacific Steamship, a Cor-
poration, Libellees in the Above-entitled Suit
and to Messrs. Smith, Warren and Whitney, Its
and His Proctors:

You and each of you are hereby notified that Clin-
ton J. Hutchins, the libellant in this suit, intends to
and does hereby appeal from the decision and final
decree entered up in this suit to the United States

Circuit Court of Appeals for the Ninth Judicial Circuit, which said decision, final order and decree was made and entered up in this suit by the District Court of the United States in and for the District and Territory of Hawaii, and entered and filed in this suit on the 13th day of April, A. D. 1917, copies of which were served April 13, A. D. 1917, and you are hereby further notified that the said libellant in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit and, in accordance with the practice and procedure in admiralty, intends to and will make application for the leave of the Honorable United States Circuit Court of Appeals for the Ninth Judicial Circuit to make new proofs before said Court in support of the allegations and facts set forth and contained in the several paragraphs of the libellant's [637] libel filed in this suit.

Dated at Honolulu in the District of Hawaii this 13th day of April, A. D. 1917.

CLINTON J. HUTCHINS,

Libellant.

By His Proctors and Advocates,

THOMPSON, MILVERTON & CATH-
CART, and

GEORGE A. DAVIS,

By (Sgd.) GEO. A. DAVIS.

[Endorsed]: No. 147. (Title of Court and Cause.)
Notice of Appeal. Filed April 13, 1917. A. E. Har-
ris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.
[638]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle,
Apparel, Boats, Furniture and Appurte-
nances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,
and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Bond on Appeal for Costs and Staying Execution.

KNOW ALL MEN BY THESE PRESENTS:
That we, Clinton J. Hutchins, residing at 57 Post
Street, in the City of San Francisco, in the city and
county of San Francisco, in the State of California,
and Bernice K. Dwight, residing at 1543 Makiki
Street, and W. C. Moore, residing at 1137 Third
Avenue, Kaimuki, in the city and county of Hono-
lulu, District and Territory of Hawaii, are held and
firmly bound unto the American Steamship "Great

Northern," her engines, etc., and A. Ahman, master, bailee and claimant thereof, and the Great Northern Pacific Steamship Company, a corporation, owners of said steamship, the above-named libellees in this suit, in the sum of Two Hundred and Fifty Dollars (\$250.00), and in the further sum of One Thousand Dollars (\$1,000.00), to be paid to the said A. Ahman, master, bailee and claimant of said steamship, and the Great Northern Pacific Steamship Company, a corporation, owners thereof, or each or either of them, its successors, his heirs, executors, administrators or assigns, for the [639] payment of which said sums of money well and truly to be made we bind ourselves and each of us and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 18th day of April, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, Clinton J. Hutchins, the libellant in the above-entitled suit has appealed to the United States Circuit Court of Appeals for the Ninth Judicial Circuit from a decree of the District Court of the United States in and for the District and Territory of Hawaii, bearing date the 13th day of April, A. D. 1917, in a suit in which Clinton J. Hutchins is libellant versus The American Steamship "Great Northern," her engines, machinery, boilers, tackle, apparel, boats, furniture and appurtenances, and A. Ahman, master, bailee and claimant, thereof, and the Great Northern Pacific Steamship Company, a corporation, owners thereof, libellees, which decree orders the

said libellant, Clinton J. Hutchins, and his stipulators to pay libellees the sum of \$16.05, costs, to be taxed by the clerk, and whereas, the said Clinton J. Hutchins, the libellant herein desires during the process of such appeal to stay the execution of said decree of the said District Court.

NOW, THEREFORE, the condition of this obligation is such, that if the above-named appellant, Clinton J. Hutchins, shall prosecute said appeal with effect and pay all costs which may be awarded against him as such appellant if the appeal is not sustained and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said court by the court below, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

CLINTON J. HUTCHINS.

By (Sgd.) F. E. THOMPSON, (Seal)

His Proctor and Attorney.

(Sgd.) BERNICE K. DWIGHT. (Seal)

(Sgd.) W. C. MOORE. (Seal) [640]

Sealed and delivered and taken and acknowledged, this 18th day of April, A. D. 1917, before me.

(Sgd.) RITCHIE G. ROSA,

Notary Public, First Judicial Circuit, Territory of Hawaii.

This bond is hereby approved as to form and amount and sufficiency of sureties.

(Sgd.) HORACE W. VAUGHAN,

Judge of the United States District Court for the District and Territory of Hawaii.

Dated April 18, 1917. [641]

United States of America,
District and Territory of Hawaii,—ss.

Frank E. Thompson, one of the proctors for the libellant, Clinton J. Hutchins, and Bernice K. Dwight and W. C. Moore, being severally and duly sworn, each depose and says; that she and he resides in the city and county of Honolulu, in the District of Hawaii, and the said Frank E. Thompson, upon information and belief, says that the said Clinton J. Hutchins is worth the sum of \$2,000 over and above all his just debts and liabilities, and the said Bernice K. Dwight says that she is worth the sum of \$2500 over and above all her just debts and liabilities, and the said W. C. Moore says that he is worth the sum of \$2500 over and above all his just debts and liabilities.

(Sgd.) FRANK E. THOMPSON,

(Sgd.) BERNICE K. DWIGHT.

(Sgd.) W. C. MOORE.

Subscribed and sworn to before me this 18th day
of April, A. D. 1917.

[Seal] (Sgd.) RITCHIE G. ROSA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

*United States District Court, in and for the District
and Territory of Hawaii.*

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle, Ap-
parel, Boats, Furniture and Appurtenances,
and [642]

A. AHMAN, Master, Bailee and Claimant, Thereof,
and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Appellees.

Notice of Filing Bond on Appeal.

Gentlemen and Sirs:.

Please take notice that the bond on the appeal herein has been this day filed in the office of the clerk of the District Court of the United States in and for the District and Territory of Hawaii, and executed and given by Clinton J. Hutchins, corporation manager and capitalist of Number 57 Post Street, City of San Francisco and State of California, and whose residence is at Astor Avenue, in Berkeley, in said State of California, and Bernice K. Dwight, Campbell Block, Merchant Street, Honolulu, whose residence is at Number 1543 Makiki Street, and W. C. Moore, whose residence is at 1137 Third Avenue,

whose business address is Treasurer, Benny & Company, Limited, 134 Beretania Street.

Yours, etc.,

THOMPSON, MILVERTON & CATH-
CART, and
GEORGE A. DAVIS,

Proctors for Appellant.

By (Sgd.) GEO. A. DAVIS.

Honolulu, April 18, A. D. 1917.

To WILLIAM OWEN SMITH, L. J. WARREN and
WILLIAM L. WHITNEY, Jrs., Esqrs.,

Proctors for Appellees.

[Endorsed]: No. 147. (Title of Court and Cause.)
Bond on Appeal for Costs and Staying Execution.
Filed Apr. 18, 1917. A. E. Harris, Clerk. By
(Sgd.) Wm. L. Rosa, Deputy. [643]

No. 147. In the District Court of the United
States, for the Territory of Hawaii. Clinton J.
Hutchins vs. The American Steamship "Great
Northern," Her Engines, etc. Assignment of Er-
rors. Filed Apr. 16, 1917, at 11 o'clock and 10 min-
utes A. M. A. E. Harris, Clerk. Wm. L. Rosa,
Deputy Clerk. R. [644]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

No. 134.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle,
Apparel, Boats, Furniture and Appurten-
ances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,
and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Assignment of Errors.

Now comes the above-named Clinton J. Hutchins,
libellant-appellant herein, and says:

That in the record and proceedings in the above-
entitled cause there is manifest errors, and said libel-
lant-appellant now makes, files and presents the fol-
lowing assignment of errors upon which he will rely
as follows, to wit:

1. The Court erred in dismissing the libel in this
suit.

2. The Court erred in finding and holding that the admission in the libellee's answer that the libellant, while using or attempting to use the shower-room or compartment on the port side of the bath-room on sea-deck of said vessel and as set out more fully in the answer was not binding on the libellee, and that because one witness testified that the libellant did not slip upon the bottom of the basin, but that he lost his balance and fell on account of the motion of the vessel when he started to step into the shower-room and before he ever placed either foot upon the floor or basin thereof, in the [645] face of the admission contained in the answer and the proof adduced in support of the allegations contained in the libel that the libellant did fall in the compartment and was upon the floor of the basin of the shower-bath at the time he sustained the injuries as alleged in the libel was and is manifest error.

3. The Court erred in holding that upon the facts appearing from the trial of said cause, the weight of evidence was entirely on the side of the libellee as to the issue whether the master of the said steamship, the said steamship and the owners thereof, violated its and their marine contract in failing to supply and furnish the libellant with a safe place in which to bathe, the libellant sustained the injuries set out in the libel while in the act of taking a bath, which the libellee's testimony clearly shows was a dangerous place, and the marine contract entered into to carry the libellant safely from the port of San Francisco to the port of Honolulu was violated and broken, and the libellees were therefore responsible in damages.

4. The whole of the testimony taken together sustains the allegations of the libel by a clear preponderance of the evidence and establishes that the shower-bath and compartment and the approaches thereto and the basin itself into and upon which the libellant had one foot at the time he fell and sustained the injuries complained of was dangerous and unsafe, and there was and is manifest error in holding and deciding that the steamship and its owners were and are not liable for any damages for such injuries.

5. The Court erred in holding that upon the facts appearing from the trial of said cause the libellees were not to blame, and had not violated the marine contract entered into between the libellant, the master of the said steamship, the said steamship and the owners thereof, and there was manifest error in dismissing the libel.

6. The Court erred in holding that the libellees were not liable under the testimony adduced in this suit for the gross incompetence of the physician and surgeon in their employ and on board [646] of said steamship, and whose duty it was to treat sick and injured passengers skillfully, the preponderance of the evidence and the weight of the evidence clearly establishes that this physician and surgeon was both incompetent and unskillful.

7. The Court erred in holding that the libellees had placed on board of said steamship and in charge of the medical and surgical department a competent physician, the burden of proof was upon the libellees to so establish that said physician and surgeon was both competent and skillful, neither of which facts

they established, nor is there any evidence to support this finding.

8. The Court erred in finding that the marine contract entered into between the libellant, the master of said steamship, the said steamship and the owners thereof, was not violated, and that a competent physician had been placed on board, the proof fails to show that the owners of said steamship, the master of said steamship, or any agent in their behalf, had exercised any care or the care required of them by statute in selecting the physician they did select.

9. The evidence discloses that the treatment of the libellant by the physician and surgeon in the employ of the libellees was unskillful, in fact that he rendered no surgical assistance to the libellant from the time of the happening of the accident down to and until the libellant reached the port of Honolulu, except to administer half a grain of codeine, and that he treated the fracture of the arm which the libellant sustained in the bath-room on board said steamship as a bruise, and that this evidence conclusively establishes both incompetency and unskillfulness on the part of said physician, for which the libellees were and are responsible.

10. The Court erred in finding that upon the facts appearing on the trial of said cause no damage had resulted to the libellant.

11. The Court erred in finding for the libellees and against the libellant.

12. The Court erred in finding and holding that neither the master of said vessel, the said vessel and the owners thereof, [647] violated the marine con-

tract nor committed breaches of said contract nor the duties or obligations arising therefrom as alleged in the libel, for the reason stated in the decision filed herein.

13. The Court erred in entering a final decree in favor of the libellees in this suit.

14. The Court erred in making, rendering and entering the final decree in this suit upon the findings and records therein.

15. The Court erred in rendering and making its decree in said suit because said decree was and is contrary to law, equity and admiralty and to the evidence, facts and pleadings as stated and shown in the pleadings and records in said suit.

In order that the foregoing assignment of errors may be and appear of record, the said libellant-appellant files and presents the same to said Court, and prays that such disposition on behalf thereof may be made as is in accordance with law and the statutes of the United States in such case made and provided, and said libellant-appellant prays a reversal of the said final decree heretofore made and entered up by said court.

Dated at Honolulu the 16th day of April, A. D. 1917.

CLINTON J. HUTCHINS,
By THOMPSON, MILVERTON & CATH-
CART and
GEORGE A. DAVIS,
By GEO. A. DAVIS,
His Proctors.

Recd. a copy of the foregoing assignment of errors
this 16 day of April, 1917.

SMITH, WARREN & WHITNEY,
Proctors for Libellees. [648]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

NUMBER 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle, Ap-
parel, Boats, Furniture and Appurtenances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,
and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Petition on Appeal.

The above-named libellant, conceiving himself ag-
grieved by the final decree made and entered in the
above-entitled cause on the 13th day of April, A. D.
1917, wherein and whereby it was ordered, adjudged
and decreed that the libel herein and the same is

hereby dismissed, and that said libellant pay to the libellees herein the costs and disbursements of said libellees in the above-entitled cause, taxed at \$725.27, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, for the reasons set forth in the assignment of errors filed herewith. And said libellant prays that his petition herein for his said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. [649]

Dated, Honolulu, T. H., April 16th, 1917.

CLINTON J. HUTCHINS.

By THOMPSON, MILVERTON & CATH-
CART and

GEO. A. DAVIS,

His Proctors.

Order Allowing Appeal.

Upon the foregoing petition of Clinton J. Hutchins, libellant, praying for the allowance of an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, it appearing to the Court that said libellant has duly filed his assignment of errors as required by law, by the rules of said United States Circuit Court of Appeals for the Ninth Circuit; now, therefore,

IT IS HEREBY ORDERED that said appeal be and the same is hereby allowed as prayed for.

Dated, Honolulu, T. H., April 16th, 1917.

(Sgd.) HORACE W. VAUGHAN,
Judge of the United States District Court in and for
the District and Territory of Hawaii.

UNITED STATES MARSHAL'S OFFICE.

Marshal's Return.

The within petition on appeal, and order allowing appeal, was received by me on the 16th day of April, A. D. 1917; and is returned as executed upon L. J. Warren, of the firm of Smith, Warren and Whitney, proctors for libellee; and R. B. Booth, treasurer, of F. L. Waldron, Ltd., a corporation, agent of the Great Northern Pacific Steamship Company, a corporation, owner of the steamship "Great Northern," by exhibiting to each of them the original petition on appeal, and order allowing appeal, and by handing to and leaving with each of them a certified copy of the within petition on appeal, and order allowing appeal.

J. J. SMIDDY,
U. S. Marshal.

By O. F. Heine,
Deputy. [650]

[Endorsed]: No. 147. (Title of Court and Cause.)
Petition on Appeal and Order Allowing Same. Filed
April 16th, 1917. A. E. Harris, Clerk. By (Sgd.)
Wm. L. Rosa, Deputy. [651]

Filed Apr. 16, 1917, at — o'clock and — minutes — M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk.

In the District Court of the United States, in and for the District and Territory of Hawaii.

IN ADMIRALTY—IN REM.

NUMBER 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances,
and

A. AHMAN, Master, Bailee and Claimant Thereof,
and

THE GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Citation.

United States of America,
District and Territory of Hawaii,—ss.

The President of the United States: To The American Steamship "Great Northern," Her Engines, Machinery, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances, and A. Ahman, Master, Bailee and Claimant Thereof, and The

Great Northern Pacific Steamship Company, a Corporation, Owners Thereof, Libellees, and to Messrs. Smith, Warren & Whitney, Their Proctors, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the office of the clerk of the United States District Court in and for the District and Territory of Hawaii in the above-entitled proceeding, wherein the above-named Clinton J. Hutchins is [652] libellant, and you are the respective libellees, to show cause if any there be, why the decree entered in the above-entitled proceeding on the 13th day of April, A. D. 1917, in said appeal mentioned, and thereby appealed from, should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 16th day of April, A. D. 1917, and of the Independence of the United States the one hundred and forty-first.

HORACE W. VAUGHAN,

Judge of the United States District Court in and for the District and Territory of Hawaii.

[Seal]

Attest: A. E. HARRIS,

Clerk.

I hereby accept service of the within Citation and all other papers required on Appeal to the United

States Circuit Court of Appeals for the Ninth Circuit have been served upon me this day in this suit.

Dated Honolulu, T. H., April 16, 1917.

THE AMERICAN STEAMSHIP "GREAT
NORTHERN," Her Engines, etc., and
A. AHMAN, Master, etc., and
THE GREAT NORTHERN PACIFIC
STEAMSHIP COMPANY, etc., Libel-
lees,

By _____,
Their Proctors. [653]

UNITED STATES MARSHAL'S OFFICE.

Marshal's Return.

The within citation was received by me on the 16th day of April, A. D. 1917, and is returned executed upon L. J. Warren, of the firm of Smith, Warren and Whitney, proctors for libellee; and R. B. Booth, Treasurer of F. L. Waldron, Ltd., a corporation, agent of the Great Northern Pacific Steamship Company, a corporation, owner of the steamship "Great Northern," by exhibiting to each of them the original citation, and by handing to and leaving with each of them a certified copy of citation.

J. J. SMIDDY,
United States Marshal.

By O. F. Heine,
Deputy U. S. Marshal.

Dated at Honolulu this 16th day of April, A. D.
1917.

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

NUMBER 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTH-
ERN," Her Engines, Machinery, Boilers,
Tackle, Apparel, Boats, Furniture and Ap-
purtenances,

and

A. AHMAN, Master, Bailee and Claimant Thereof,

and

THE GREAT NORTHERN PACIFIC STEAM-
SHIP COMPANY, a Corporation, Owners
Thereof,

Libellees.

Praeipice for Transcript on Appeal.

To the Clerk of the United States District Court for
the Territory of Hawaii:

You will please prepare a transcript of the record
in the above-entitled cause, to be filed in the office of
the clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit, under the appeal and
assignment of errors heretofore sued out and per-
fected to said Court, and include in said transcript
the following pleadings, proceedings and papers on
file, to wit:

1. Statement under Admiralty Rule 4.
2. Libel.
3. Monition.
4. Claim.
5. Appearance of Smith, Warren & Sutton.
6. Bond for costs, stipulation.
7. Bond to U. S. Marshal for release of said
"Great Northern." [654]
8. Order of release.
9. Order extending time to plead.
10. Order extending time to plead.
11. Claimant's exceptions to libel.
12. Stipulation for taking testimony.
13. Stipulation for commission to take testimony.
14. Commission to take testimony.
15. Stipulation for commission to take testimony
of B. R. Simons and order thereon.
16. Commission to take testimony.
17. Answer of claimant.
18. Notice of return and filing of depositions.
19. Stipulation for opening of depositions of Wal-
ter A. Scott, et al., and Barney R. Simons.
20. Motion to set cause for trial and notice thereof.
21. Amendment to libel.
22. Depositions of Francis G. Lefebvre, libellant.
23. Depositions of Walter A. Scott et al., libellees.
24. Depositions of J. B. Morris and W. P. Metzler,
libellee.
25. Depositions of B. R. Simons, libellees.
26. Libellant's Exhibit "A."
27. Libellant's Exhibit "B."
28. Libellant's Exhibit "C."

29. Libellant's Exhibit "D."
30. Libellee's Exhibit "1."
31. Motion to take depositions of C. W. Wiley.
32. Amended application and affidavit for commission to take testimony of C. W. Wiley.
33. Order for commission to take testimony of C. W. Wiley.
34. Direct interrogatories proposed on behalf of the claimant to be propounded to the witness C. W. Wiley.
35. Cross-Interrogatories proposed on behalf of the libellant to be propounded to the witness C. W. Wiley.
36. Commission to take testimony of C. W. Wiley.
37. Claimant's answer to paragraph 4a filed February, 16th, 1917, as an amendment to the libel.
[655]
38. Libellee's Exhibit 2.
39. Libellee's Exhibit 3.
40. Libellee's Exhibit 4.
41. Deposition of C. W. Wiley.
42. Decision of Vaughan, Judge.
43. Final decree and motion for entry of same.
44. Notice of appeal.
45. Bond for costs and to stay execution.
46. Notice of entry of decree.
47. Petition for appeal, and order allowing same.
48. Assignment of errors.
49. Citation on appeal.
50. Clerk's minutes.
51. Transcript of testimony.

52. This praecipe.

53. Clerk's certificate to transcript.

Said transcript to be prepared as required by law and the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, before the 16th day of May, A. D. 1917.

THOMPSON, MILVERTON & CATH-
CART, and

GEO. A. DAVIS,

Proctors for Appellant.

[Endorsed]: No. 147. (Title of Court and Cause.)
Praecipe for Transcript of Appeal. Filed April
16th, 1917. A. E. Harris, Clerk. By (Sgd.) Wm.
L. Rosa, Deputy. [656]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

CLINTON J. HUTCHINS,

Libellant and Appellant,

vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle, Ap-
parel, Boats, Furniture and Appurtenances,
Libellee,

and

A. AHMAN, Master and Claimant,

Appellee.

Objections of Appellee to Printing of Unnecessary Portions of the Record Designated in Appellant's Praecept and Designation by Appellee of Additional Portions of the Record to be Printed.

Now comes A. Ahman, master and claimant of the American steamship "Great Northern," appellee in the above-entitled cause, and, referring to the praecipe for transcript on appeal, filed herein by the appellant on the 16th day of April, 1917, now objects to there being included and printed at large in the transcript on appeal in said cause the several papers, documents and portions of the record in the United States District Court in the said praecipe designated as follows:

3. Monition.
5. Appearance of Smith, Warran & Sutton.
6. Bond for costs, stipulation. [657]
7. Bond to U. S. Marshal for release of said "Great Northern."
8. Order of release.
9. Order extending time to plead.
10. Order extending time to plead.
11. Claimant's exceptions to libel.
12. Stipulation for taking of testimony.
13. Stipulation for commission to take testimony.
14. Commission to take testimony.
15. Stipulation for commission to take testimony of B. R. Simons and order thereon.
16. Commission to take testimony.
18. Notice of return and filing of depositions.

19. Stipulation for opening of depositions of Walter A. Scott et al., and Barney R. Simons.
20. Motion to set cause for trial and notice thereof.
31. Motion to take depositions of C. W. Wiley.
32. Amended application and affidavit for commission to take testimony of C. W. Wiley.
33. Order for commission to take testimony of C. W. Wiley.
34. Direct interrogatories proposed on behalf of the claimant to be propounded to the witness C. W. Wiley.
35. Cross-interrogatories proposed on behalf of the libellant to be propounded to the witnesses C. W. Wiley.
36. Commission to take testimony of C. W. Wiley.
43. Motion for entry of decree (the final decree to be printed).

Said appellee does hereby offer on his part to make and enter into a stipulation with the appellant substantially in the form of the stipulation hereto attached and which proposed stipulation is now signed and tendered herewith to the end that the said stipulation may be made a part of the transcript on appeal in lieu of the several portions of the record hereinabove objected to.

Appellee states as the ground for his objection herein and for the tendering of said stipulation that the printing of the said portions of the record at length will unnecessarily enlarge [658] the record and occasion needless expense.

The appellee hereby designates as an additional portion of the record to be printed as part of the

transcript on said appeal, the reporter's transcript of the testimony of witnesses and showing the objections or rulings and orders made by the Trial Judge in the course of the trial of said action.

Dated, Honolulu, T. H., April 26, 1917.

A. AHMAN,
Master and Claimant.
By His Proctors,
SMITH, WARREN & WHITNEY.

Received a copy of the foregoing objections and the form of stipulation attached this 26th day of April, A. D. 1917.

(Sgd.) GEO. A. DAVIS,
One of the Proctors for Libellant-Appellant. [659]

*In the District Court of the United States, in and for
The District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

CLINTON J. HUTCHINS,
Libellant and Appellant,
vs.

The American Steamship "GREAT NORTHERN,"
Her Engines, Machinery, Boilers, Tackle, Ap-
parel, Boats, Furniture and Appurtenances,
Libellee,

and

A. AHMAN,
Master and Claimant,
Appellee.

Stipulation for Reduction of Matter in Transcript on Appeal.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause on the appeal thereof to the United States Circuit Court of Appeals for the Ninth Circuit, that the following portions of the record designated in appellant's praecipe for the transcript on appeal may be omitted from the transcript and the following summary statement substituted and printed in said transcript in lieu thereof, to wit:

Omit the following items designated in said praecipe:

3. Monition.
5. Appearance of Smith, Warren & Sutton.
6. Bond for costs, stipulation. [660]
7. Bond to U. S. Marshal for release of said
"Great Northern."
8. Order of release.
9. Order extending time to plead.
10. Order extending time to plead.
11. Claimant's exceptions to libel.
12. Stipulation for taking of testimony.
13. Stipulation for commission to take testimony.
14. Commission to take testimony.
15. Stipulation for commission to take testimony of
B. R. Simons and order thereon.
16. Commission to take testimony.
18. Notice of return and filing of depositions.
19. Stipulation for opening of depositions of Wal-
ter A. Scott et al., and Barney R. Simons.

20. Motion to set cause for trial and notice thereof.
31. Motion to take depositions of C. W. Wiley.
32. Amended application and affidavit for commission to take testimony of C. W. Wiley.
33. Order for commission to take testimony of C. W. Wiley.
34. Direct interrogatories proposed on behalf of the claimant to be propounded to the witness C. W. Wiley.
35. Cross-interrogatories proposed on behalf of the libellant to be propounded to the witnesses C. W. Wiley.
36. Commission to take testimony of C. W. Wiley.
43. Motion for entry of decree (the final decree to be printed).

It is further stipulated and agreed as follows:

That a monition was issued in said cause for the attachment of said vessel, her tackle, etc., on April 4, 1916, which was executed, returned and filed the same day.

Claim of said vessel was made and filed on April 4, 1916, by A. Ahman, master of said vessel, claiming the same on behalf of her owner, Great Northern Pacific Steamship Company, of Portland, Oregon.

[661]

Appearance of Smith, Warren & Sutton was made and filed for the claimant April 4, 1916.

A stipulation for costs in the sum of \$500 was filed April 4, 1916, by Clinton J. Hutchins, libellant, as principal, and The United States Fidelity & Guaranty Company, as surety.

A bond for the release of said vessel was filed April

4, 1916, for \$30.00 with A. Ahman, Master, as principal, and The United States Fidelity & Guaranty Company, as surety; and an order of release of said vessel made the same day.

The time to plead was by successive orders of the Court extended to May 30, 1916.

Exceptions to the libel were filed by the claimant on May 27, 1916, and subsequently overruled by consent.

Under a stipulation filed June 13, 1916, a commission was issued, by order of the Court, on that date, to Ira A. Campbell, of San Francisco, California, to take the depositions *de bene esse* of A. Ahman, and any other witnesses called by either party.

Under a stipulation filed June 28, 1916, a commission was, by order of the Court, issued to Wm. H. Whitaker, of Philadelphia, Pennsylvania, to take the deposition of B. R. Simons.

Pursuant to a motion filed by the claimant February 21, 1917, and amended February 23, 1917, an order was made and filed February 23, 1917, and a commission issued thereunder to take the deposition of C. W. Wiley, of Seattle, Washington, which commission with direct and cross-interrogatories attached was issued February 24, 1917.

A motion for entry of decree was made by libellant on April 11, 1917, and heard April 13, 1917, on which last-named date the final decree was signed and filed.

Notice of entry of decree and service of a copy of decree was made and given, and the notice filed on April 14, 1917. [662]

Notice of appeal from final decree to the United

States Circuit Court of Appeals for the Ninth Circuit was filed April 13, 1917, in which notice it was stated that the libellant "intends to and will make application for the leave of the Honorable United States Circuit Court of Appeals for the Ninth Circuit to make new proofs before said Court in support of the allegations and facts set forth and contained in several paragraphs of the libellant's libel filed in this suit."

A bond on appeal for costs in the sum of \$250 and to stay execution in the sum of \$1,000 was filed April 18, 1917.

It is further understood and agreed that the transcript of testimony upon the trial of said cause will be included as a part of the transcript on appeal although not designated in the said praecipe.

Dated Honolulu, T. H., April 26th, 1917.

(Sgd.) WILLIAM O. SMITH,

(Sgd.) L. J. WARREN,

(Sgd.) SMITH, WARREN & WHITNEY,

Proctors for Appellee.

(Sgd.) THOMPSON, MILVERTON & CATHCART,

By (Sgd.) GEO. A. DAVIS,

Proctors for Appellant.

Approved May 31, 1917.

(Sgd.) HORACE W. VAUGHAN,

Judge.

[Endorsed]: No. 147. (Title of Court and Cause.)
Objections of Appellee, etc. Filed Apr. 26, 1917.

A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa,
Deputy Clerk. [663]

**Proceedings at Taxation of Costs, Order Taxing
Costs Against Libellant.**

From the Minutes of the United States District
Court, Vol. 10, page 448, Thursday, April 26,
1917.

(Title of Court and Cause.)

On this day came Mr. George A. Davis, one of the
proctors for the libellant, and also came Mr. L. J.
Warren, of the firm of Smith, Warren & Whitney,
proctors for the libellee herein, and this cause was
called for hearing on motion for taxation of costs.
Thereupon and after due hearing, the Court allowed
the amount of \$725.27 as costs taxable against the
libellant. [664]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

IN ADMIRALTY—No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order to Withdraw Exhibits from the Files.

It is hereby ordered that the clerk of this court

be permitted to withdraw from the files of this court for the purposes of sending to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the following exhibits introduced in evidence in the above-entitled cause, the said above-entitled cause having been taken on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, viz., Libellant's Exhibits "A," "B," "C," "D" (X-ray plates), Libellee's Exhibits 1, 2, 3, 4 (Letter, etc., certificates of recommendation), Claimant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 (three photos, log, voucher, voucher, voucher, list of repairs and improvements, receipted bills).

Dated Honolulu T. H., November 8th, 1917.

HORACE W. VAUGHAN,

Judge, U. S. District Court.

Filed Nov. 8, 1917, at — o'clock and — minutes — M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [665]

(Title of Court and Cause.)

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, A. E. Harris, Clerk of the United States District Court for the District and Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 665, inclusive, is a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I do further cer-

tify that I hereto annex the original Assignment of Errors, Citation on Appeal, Orders Extending Time to Transmit Record on Appeal and Exhibits in said cause.

I further certify that the cost of the foregoing transcript of record is \$102.50, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this court this 8th day of November, A. D. 1917.

[Seal] A. E. HARRIS,
Clerk U. S. District Court, Territory of Hawaii.
[666]

[Endorsed]: No. 3084. United States Circuit Court of Appeals for the Ninth Circuit. Clinton J. Hutchins, Appellant, vs. American Steamship "Great Northern," Her Engines, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances, and A. Ahman, Master, Bailee and Claimant Thereof, and the Great Northern Pacific Steamship Company, a Corporation, Owners Thereof, Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the District and Territory of Hawaii.

Filed November 27, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

